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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Third report on the human rights situation in Burundi submitted by the Special Rapporteur, Mr. Paulo Sérgio Pinheiro, in accordance with Commission resolution 1997/77

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Introduction

1. This report is submitted by the Special Rapporteur to the Commission on Human Rights at its fifty-fourth session, in accordance with Commission resolution 1997/77. It follows on the report covering the period from 15 April to 31 August 1997 which the Special Rapporteur submitted to the General Assembly at its fifty-second session (A/52/505) and chiefly describes the Special Rapporteur's impressions during his fourth visit to Burundi.

2. During the fifty-second session of the General Assembly, the Special Rapporteur had a discussion with Mr. G. Ndaruzaniye, Permanent Representative of Burundi in New York, and then signed with him a communication dated 12 November 1997 addressed to the Chairman of the Third Committee requesting him to suspend the debate on the human rights situation in Burundi for a week in order to enable the Government of Burundi to submit its comments. During that discussion, the Permanent Representative of Burundi undertook to urge his Government to invite the Special Rapporteur to carry out a mission to the country before the end of 1997.

3. The Burundian delegation having welcomed his report on 17 November 1997, the Special Rapporteur wrote to Burundi's Minister for Foreign Affairs and Cooperation to inform him of his desire to make a fourth visit to the country from 7 to 20 December 1997. On 20 November 1997, the Permanent Representative of Burundi in New York communicated to the Special Rapporteur the Burundian Government's acceptance of that request. In a communication dated 26 November, the Minister for Foreign Affairs and Cooperation confirmed his Government's willingness to receive the Special Rapporteur at the proposed time.

4. The first chapter of the present report describes the salient points of the Special Rapporteur's visit to Burundi. Chapter two concerns the comments made by the Special Rapporteur during his mission and chapter three sets out his recommendations.

I. THE SALIENT POINTS OF THE SPECIAL RAPPORTEUR'S VISIT

5. During his fourth mission to Burundi, which lasted from 7 to 20 December 1997, the Special Rapporteur met the country's highest political, administrative, judicial, military and religious authorities, as well as members of the diplomatic corps and representatives of the United Nation's system and non-governmental organizations. He also held discussions with the Resident Representative of the United Nations Development Programme, the Special Representative of the Secretary-General of the Organization of African Unity (OAU), a number of representatives of local associations active in the spheres of human rights and development and promotion of the status of women, and with the local press.

6. The Special Rapporteur is very grateful to the Burundian authorities for their warm welcome and for the fact that, thanks to the active assistance of the Chief of Protocol of the Ministry of Foreign Affairs and Cooperation, his mission went extremely smoothly. He is particularly grateful to those authorities for the constant concern they demonstrated for his safety, particularly during his time in the field. It was with dismay that he heard

of the accidental death of Colonel Firmin Sinzoyiheba, the Minister of Defence, whose frankness and openness to dialogue he greatly appreciated during each of his four visits to Burundi. He wishes to express to the members of the Government of Burundi his sincere condolences at this difficult time in the life of the country.

7. The Special Rapporteur emphasizes yet again the outstanding commitment that the institutions of the United Nations system in Burundi daily demonstrate in assisting the victims of the crisis or war in often difficult working and security conditions. He extends his warmest thanks to the director of the High Commissioner for Human Rights' operations office in Burundi and all his team for the excellent preparations and arrangements they made for his visit in conjunction with the United Nations Designated Official and security unit. He also wishes to extend particular thanks to the Ambassador of the United States of America, who placed an armoured vehicle at his disposal for virtually the whole of his visit, and to the Chargé d'affaires of the Belgian Embassy, who did the same for a day. Lastly he wishes to express his gratification at the welcome and the judicious advice he received from the director of the United Nations Office in Burundi.

A. Situation in the field

1. Emergence of a few safe areas

8. The Special Rapporteur went by road to several of the country's provinces. In Gitega, he met Major Buyoya, the Head of State. In Bujumbura Rural, where there had recently been some unrest, he followed a path through a banana plantation for over a kilometre to inspect damage caused by the rebellion to a primary school attended by 650 pupils located on a hill in the commune of Isare. Four days later, not far away, an anti-tank mine exploded in a puddle on a metalled section of road over which the Special Rapporteur's vehicle had travelled, killing two soldiers and six civilians taking materials to the school to rebuild it.

9. In Kayanza province, the Special Rapporteur was able to see how difficult living conditions were for displaced persons in a camp near the administrative centre of the province. He also went to the regroupment site at the other side of the town, which had been largely dismantled. In addition, he visited Bubanza province, where there were 170,000 affected persons in a number of camps near the provincial hospital. The hospital takes in war-wounded, victims of anti-personnel mines, and persons suffering from malaria, scabies or acute malnutrition. He also visited one of the Mugongo sites which held about 2,400 people, some of whom had been repatriated from the Democratic Republic of the Congo and some of whom were civilians who had fled from the neighbouring collines to escape the rebels. A group of approximately 70 people, including many children, some of them with obvious symptoms of malnutrition and vitamin deficiency, had arrived at the camp on the morning of the Special Rapporteur's visit and were waiting for the camp reception committee to help them.

10. Nearer the capital, Bujumbura, the Special Rapporteur went to Gatumba, a locality close to the border with the Democratic Republic of the Congo. Here he visited a transit centre run by the Office of the United Nations

High Commissioner for Refugees housing some 2,400 returnees. This centre, which had been more crowded on several occasions in the recent past, contains a unit under the auspices of Oxfam-Canada where some 40 unaccompanied children are looked after by a few women, some of whom had left the country more than 20 years earlier and were waiting to learn their next destination.

11. Generally speaking, the Special Rapporteur found that security had improved and that the main roads had been cleared, with soldiers much in evidence on them. On some dirt roads there were barriers guarded by civilians.

12. The Special Rapporteur wishes to emphasize the effort made by the civilian and military authorities to involve the population more closely in the rebuilding of decent housing, especially for displaced persons, and in the night-time patrolling of residential areas and regroupment sites. However, he also received several reports of more questionable recourse to such measures, with civilians being substituted for agents of the State for the performance of tasks of a military nature, such as de-mining or the maintenance of public order.

13. Security conditions are variable, depending on the rebels' movements; that is particularly so in the Kibira forest and in the areas around Bujumbura Rural. Bururi province, especially the Rumonge and Nyanza-Lac sectors, is also on the rebels' route. The rebels harass the inhabitants of the areas they cross by demanding money and punishing them when they resist and refuse to join the rebellion. They have also kidnapped children and adolescents and destroyed schools and administrative buildings.

14. Nonetheless, in the provinces where security has improved, the Special Rapporteur found among the civilian and military officials he met a willingness to identify the many problems or needs of the rural population, whose fundamental rights have been severely affected by the consequences of the civil war and economic sanctions, and, despite the very limited resources available, to respond to them. Apart from the 600,000 affected persons (displaced persons, regrouped persons, returnees, etc.) in the country, it is the rural population in general that is suffering worst from the devastating effects of malnutrition, epidemics, shortages of medicines, fuel price rises, shortages of fertilizer and seeds, livestock losses and disruption of distribution channels that are preventing or greatly increasing the cost of marketing coffee and tea.

2. Return of affected persons

15. Generally speaking, the Special Rapporteur found that living conditions for displaced or regrouped persons were still poor. The people want to return to their collines, but are often unable to do so because health centres, schools and other administrative buildings have been destroyed in clashes between troops and rebels or in deliberate acts by rebels.

16. In Bubanza province, the fighting between groups of armed rebels and the Burundian army since autumn 1997 has caused many people to flee from the area bordering Cibitoke province to the town of Bubanza. In early December, there was little possibility of these people returning to their home collines

because of the insecurity in Bubanza province, continuing clashes between troops and rebels, and the explosion of mines on unmetalled roads. The civilian authorities have tried to settle some of these people part way towards their homes, in collines protected by the army adjacent to Bubanza and Cibitoke provinces. Unfortunately, only about a third of the sites are accessible to international aid organizations.

17. In Kayanza province, the Special Rapporteur found that, because of fresh incidents in their home collines, a plan to return some 80,000 regrouped people to their homes had been suspended since October 1997. Pending the improvement of security conditions, the World Food Programme (WFP) had distributed "return packages" containing food, seeds, tools and other essentials to some 33,000 people so that those fortunate enough to have fields near the regroupment sites could tend them. The sudden decision of the civilian and military authorities in autumn 1997 to transfer 5,000 people, including some 40 people suffering from severe malnutrition who were being cared for by a health centre near the Rewegura site, to the north-east of Cibitoke province gives an idea of the tense atmosphere in Kayanza province in the final quarter of the year.

18. In Muramvya province, on the other hand, no major problems had been encountered in keeping to the authorities' schedule for returning people to their homes. Between April-May and November 1997, nearly 95,000 regrouped persons received WFP "return packages" in order to help them set up again in their home collines. Security conditions had remained satisfactory in the province, despite population movements along its borders because of unrest in, successively, the three adjacent provinces of Bujumbura Rural, Bubanza and Kayanza. In Karuzi province, the schedule, as of early November, provided for all regrouped persons to have returned home by the end of December 1997. A field survey made by the Humanitarian Coordination Unit in November showed that approximately half the people in question had gone home and were living in houses that they had built themselves in the period immediately preceding their return.

19. Recognizing how much displaced persons have suffered in the past four or five years, the civilian and military authorities have begun to build some of them simple adobe houses, like those the Special Rapporteur saw in Kayanza province on land where there was often no water alongside metalled roads. Displaced persons are sometimes even more apprehensive about returning to their home collines than regrouped persons and opt for temporary settlement half-way between roads and their home collines where they can take advantage of the international humanitarian assistance distributed by the non-governmental organizations working in Burundi.

20. Because the country is so hilly, housing has traditionally been scattered in Burundi, a fact that has long prevented the establishment of the type of collective infrastructure that would be appropriate to the development of the rural areas and that is now essential if living conditions there are to be improved. The absence of such equipment creates serious problems for the local people by depriving them of their most basic economic and social rights. In some instances, the living conditions of rural Burundians are, except as regards freedom of movement, hardly any better than those of their compatriots in regroupment sites or camps for displaced persons. In addition, they are at

a disadvantage by comparison with the inhabitants of towns since they have no way of improving their economic or social lot and the full burden of the civil war and the crisis destroying the country falls on them alone. While acknowledging the Burundian Government's efforts to help the affected population groups, 1/ the Special Rapporteur is afraid that a wide gap will eventually be created between urban and rural dwellers and that this will be detrimental to the authorities' goal of long-term reconciliation.

3. Persistence of violations of human rights and international humanitarian law

21. Given the rapid and often unpredictable course of events affecting the human rights situation in Burundi, the Special Rapporteur reserves his right to express himself further on this matter in an addendum to this report and to illustrate it, if necessary, by allegations of human rights violations.

a. Serious violations by agents of the State

22. The Special Rapporteur notes, on the basis of information and testimony from various sources, that serious violations of human rights and international humanitarian law attributable to members of the army or law enforcement agencies - massacres, enforced or involuntary disappearances and arbitrary arrests and detention - are still common in Burundi. According to certain sources, such violations are particularly frequent in the provinces of Cibitoke, Bubanza, Bujumbura Rural, Bururi and Makamba, regions that are still disturbed and through which rebel groups often pass. While, to judge from the allegations made to the Special Rapporteur, the victims no longer number in the hundreds, as they did in the incidents of a few months ago, the incidents themselves are still frequent.

23. According to one report made to the Special Rapporteur, there was a very serious incident in Buyengero commune, which lies in Bururi province, between the localities of Mugamba and Rumonge, early in October 1997. Troops surrounded the entire Buyengero area from the north and south before entering it and starting a month-long mopping-up operation against the rebels. The clashes are said to have left hundreds of people dead. Allegedly, the army kept humanitarian organizations away from the area of the operation. Eyewitnesses claim that many of the dead were either left unburied or thrown into mass graves. Local inhabitants apparently saw large numbers of bodies floating in the Dama river, which enters Lake Tanganyika near Rumonge. The people who escaped the massacre are said to have been forced to find food and carry weapons for the troops. Between 12,000 and 20,000 civilians fleeing the fighting allegedly took refuge in Buyengero parish, around which mines had been laid. The troops apparently came to seek out the men and force them to walk ahead of them and help them to check where the mines were. The soldiers also apparently demolished the brick-built houses in this relatively well-developed area, carrying off the roofing materials to sell them, and burnt the straw huts and stole the crops.

24. To judge from the size of the Burundian prison population - almost 10,000 - the number of arrests, and with it the risk of arbitrary arrest, has risen appreciably and caused a worsening of the conditions of detention in the country's main prisons described to the Special Rapporteur. It would seem

from the Special Rapporteur's discussions with them that the authorities of the Mpimba, Bujumbura and Gitega prisons are aware of the problem of overcrowding and are trying to make an accurate survey with a view to carrying out the necessary building work and improving services, particularly medical care, for the prisoners. It should be noted that malaria, typhus, bacillary dysentery and cholera are again on the increase in the prisons, catching the relevant authorities unprepared, for they received little more than half their requested budget in 1997 (628 million Burundi francs, as against an estimated requirement of FBu 1 billion).

25. In Bujumbura, the Special Rapporteur visited the Special Investigations Brigade (Brigade spéciale de recherche, BSR) and its cells which hold an average of 50-60, but sometimes as many as 100 prisoners. These cells, the access to which is through a courtyard, are small and in poor condition; there is no electric light and only a small opening high up for ventilation. The prisoners, who are held there for between 48 hours (garde à vue) and one or more weeks, depending on the investigation of their cases, sleep on towels or blankets laid directly on the floor. The Special Rapporteur was able to talk to a number of prisoners whom he himself selected. None of them showed any obvious signs of ill-treatment. Most of the arrests are for armed robbery, theft of a vehicle, drug possession or murder.

26. The Special Rapporteur also visited the Gendarmerie's 350-man-strong 3rd Intervention Battalion stationed near Kamenge. This unit was set up in 1994 to handle security in the then very unsettled Kinama and Kamenge neighbourhoods, which lie next to collines from which they were frequently raided by rebel forces. More recently, the Battalion's commander, helped by the Kinama and Kamenge chefs de zone, has organized joint civilian/military night-time security patrols around the neighbourhoods. Apparently, several hundred young men have been enrolled in these patrols in Kinama alone. In principle, the 3rd Battalion has no powers of arrest and, when sweeps are made for the purposes of checking people's identities, suspects only spend a short period - a few hours - in the Battalion's hands before being turned over to the Judicial Police, the Security Police or the BSR. The Special Rapporteur also inspected a small three-room building near the camp entrance that serves as the detention centre for gendarmes who have committed offences. There were a few dirty, badly-worn foam mattresses on the floor. The two gendarmes mentioned during the Special Rapporteur's meeting with the Battalion commander as being held there were not present during this inspection.

27. The Special Rapporteur has recently learned of the arrest and disappearance of seven civilians at the Bujumbura central market between November 1997 and January 1998. These people were apparently taken away either to the market jail or to the premises of the BSR or the Traffic Police or to a military facility. Common to all these arrests is the fact that none of the requisite legal procedures was observed; in most cases, indeed, there was only a denunciation by someone who did not go in person to the police. The offences or crimes allegedly committed by the persons arrested were murder or participation in massacres or armed gangs. It is apparently common for people to be held for three months or more in illegal places of detention without any information being divulged as to the reason for their arrest.

b. Violence attributed to rebel groups

28. The shape of the rebellion in Burundi is so changeable that the Special Rapporteur finds it hard to get a clear idea of the numbers of persons involved and of the real impact on the population. Moreover, his information comes from a variety of reports and interlocutors, including the Burundian authorities, and less often from the rebels themselves. However, the information from all these sources tends to coincide when it concerns provinces where there are still pockets of conflict, such as those of Cibitoke, Bubanza, Bujumbura Rural, Bururi and Makamba.

29. Rebel movements through these provinces are generally accompanied by various forms of harassment of the local population. People are often obliged to pay taxes to the rebels, even when they have already paid them to the local authorities, or else money is extorted from them in other ways. The rebels steal livestock, seize crops, and take vengeance on the local people when they are insufficiently cooperative and show an inclination to follow the orders of the civilian or military administration. This results in indiscriminate attacks on civilians, sometimes even within the regroupment sites if they are not adequately protected by the army.

30. The province of Bujumbura Rural, the hinterland to the capital, Bujumbura, has often been the target of rebel operations. In March 1995, some 20,000 people in Muvimbi commune were literally taken hostage and cut off from the outside world. It was only after strong military action, in June 1996, that they were freed from the rebels' grasp; a concerted administrative effort was then made to meet their most urgent needs. In the meantime, the local markets had been disrupted, health centres had ceased to function, and the rebels had either destroyed or otherwise closed down many primary and secondary schools. According to a recent report from the Ministry of Primary Education, some 70 schools have been destroyed in Burundi since the crisis began, approximately 20 of them in Bujumbura Rural alone, and by the beginning of 1997 the national enrolment rate had fallen from 73 per cent to 40 per cent.

31. In other communes in the province, rebels have seized groups of civilians and forced them to follow them about the country, carrying their arms and equipment. In addition, young men have been kidnapped and enrolled by force in the rebel groups. Rebel bands have also attacked local officials: they are said to have murdered 60 administrative officials in the province between 1993 and the end of 1997. In early December, attackers reportedly murdered a chef de secteur in full public view in the market place in Muvimbi commune.

32. The rebels generally move around on foot and are usually quite lightly and simply armed, although sometimes they carry more sophisticated weapons. In the attack on the environs of Bujumbura international airport on 1 January 1998, they were mostly armed with knives, axes, clubs and hoes, but also used rifles and grenades. They have for many months now been using anti-personnel and anti-tank mines, and it is not only civilians who fall victim to these weapons. The army hospital in Bujumbura is currently treating 200 soldiers who have lost either a limb or the use of their legs after stepping on a mine.

33. Some of the provinces worst beset by the rebels have begun to react, especially since the imposition of the economic sanctions, which have exacerbated their isolation and the shortage of resources. A number of people have come out of the Kibira forest exhausted and sick after having spent time in the rebel ranks. The civilian and military authorities have tried to reassure local people and to engage in dialogue with them, for example in Gitega province, in order to regain their trust and encourage them to dissociate themselves from the rebels. Efforts have also been made to assist farmers to recover land they had been forced to leave, to provide loans for the purchase of tools or seeds, and to settle, with the assistance of colline elders, disputes concerning stolen cattle or goats. 2/

34. In Kayanza province, the leader of a rebel band is notorious for having recruited numerous young men by force before he was finally killed. It is estimated that, of the province's population of 500,000 people, 10,000 young men are now missing because they have been killed or joined the rebellion. The provincial governor has contacted his colleagues in Cibitoke, Ngozi and Gitega in an effort to find the missing youths. From time to time, some of them reappear, after having grown tired of their life with the rebels or succeeded in escaping and making their way home. During his visit to Kayanza, the Special Rapporteur was able to talk to two young men who had recently left the rebel ranks. One of them told him that he had been captured in an ambush in autumn 1996 and, after various incidents, taken away by the rebels into Kibira forest. He had been given two weeks' training in the handling of light weapons and military tactics. Later he had gone with other rebels towards Zaire, near the town of Uvira, and then, in the space of a few months, towards Cibitoke and Bubanza; he had twice fallen ill. Subsequently, his superior had transferred him, with his friend, to Bururi province, where they had spent seven months. They had then decided to leave the rebels and had gone with their weapons to military headquarters in Rumonge, where they had been questioned for several hours about the reasons for their change of heart. They had spent a further two months in Rumonge before returning to Kayanza province.

B. Obstacles to democratization

35. While the Special Rapporteur found throughout his visit to Burundi increased willingness among the officials he met to take a clearer look at the problems and issues involved in the country's present situation and to remedy the most flagrant shortcomings, he is bound to say that there are still a number of obstacles to the process of democratization.

1. Absence of conditions conducive to a return to peace

36. The present regime's inertia regarding the needed reforms in Burundian institutions is being fostered by the continuing warfare in a number of provinces, not to mention the recent clashes between rebels and troops around the capital, the absence of a ceasefire or of any obvious willingness on the part of the belligerents to conclude one and engage in serious negotiations, and the deadlock that resulted from the initial efforts to mediate an end to the conflict inside and outside the country. Furthermore, the inertia is not

the sort of thing to encourage the international community to make any major investment in terms either of diplomacy, money or equipment in Burundi until certain key conditions for a return to peace have been met.

2. Tensions regarding divisive topics

37. Although the meeting hosted by UNESCO in Paris from 26 to 28 September 1997 on "Building the future of Burundi" prompted promising discussions between Burundians on problems of vital interest for their country's future, the Special Rapporteur gained the impression during his visit that controversial topics such as genocide are blocking discussion within the country itself. Burundians are divided over the question of the acts of genocide and massacres in the country's recent history and that is preventing them from agreeing on what really happened. Some people refer to the events of 1993 and others to older incidents, in an ongoing process that makes it still more difficult for the Burundians to reach a common viewpoint regarding the very painful events that caused so many deaths in each of the country's ethnic communities. Burundians are faced with the difficult task of finding a definition they can all accept of all the acts of genocide and massacres that were committed, so that they can move beyond their emotional reaction to the events and reach a point where the concept of human rights violations becomes truly meaningful for each of them. The National Assembly has recently examined a bill on genocide, but no law has yet been adopted.

3. What form of democracy is right for Burundi?

38. In speaking of democratization in Burundi, it is important to be clear that what is meant is not the reduction of democracy to electoral practice based on the majority principle, or in other words, "one man, one vote". Before there can be stable, democratic institutions, Burundians have to agree amongst themselves on a social contract that could form the basis for a State governed by the rule of law and for Burundian citizenship. 3/ Such a social contract is essential if Burundian society is to be able to overcome the temptation to ethnic bias felt by certain groups among the country's elite and by a number of politicians from all parties.

39. The process of democratization must also be more open to rural Burundians and their representatives. It is still common for chefs de zone and the heads of collines, as well as local or provincial civilian or military officials, to be appointed by higher authorities and to come from regions other than those to which they are assigned. In such circumstances, they inevitably lack legitimacy in the eyes of the people for whom they have responsibility.

4. A timid dialogue at the institutional level

40. While problems persist with the functioning of political parties and the National Assembly, it must be acknowledged that dialogue continues between Major Buyoya, the President of the National Assembly and the leaders of the Front pour la démocratie au Burundi (FRODEBU). Despite setbacks such as the six-month suspension of FRODEBU - a decision that the Government subsequently reversed - or the legal proceedings instituted against the President of the Assembly, and the ban on his travelling abroad, these discussions have yielded

some results: this is evidenced by the establishment of a joint commission comprising representatives of the Government, the Union pour le progrès national (UPRONA) and FRODEBU to promote dialogue within the country and abroad.

41. It must also be said, however, that parliamentarians still run considerable risks when trying to discharge their mandate. Some, fearing for their lives, have taken refuge abroad. Others have been forced into hiding by death threats. This situation is, inevitably, detrimental to the regularity and visibility of the National Assembly's activities. In addition, a number of leaders or members of political parties are still being harassed in ways that restrict their freedom of movement and action. The Special Rapporteur was struck during his most recent visit to Burundi by the deterioration in the health of former President Bagaza, who is suffering from his isolation from his family and other people. Other political leaders, such as Mr. Mukasi, President of UPRONA, and Father Déo Niyonzima, President of Solidarité jeunesse pour la défense des droits des minorités (SOJEDEM) - who has fled the country - are the subject of politically-motivated legal proceedings.

42. The Special Rapporteur was told that in some cases the Burundian authorities had acted against political leaders or groups in the hope of curbing extremism. He finds it hard to understand, however, how there can be any genuine national debate in Burundi while certain political movements are harassed or prevented from contributing to it.

C. Some encouraging signs in the combat against impunity and for the promotion of human rights

1. The combat against impunity

43. The problems mentioned by the Special Rapporteur in his earlier reports with regard to the administration of justice in Burundi remain basically the same - the shortages of people and money and the conspicuous absence of basic equipment (vehicles, typewriters, or photocopies, etc.) in the country's three criminal chambers. These are compounded by the manifold difficulties encountered by law enforcement officials in getting about, collecting documents for case files, identifying and seeking out witnesses or claimants required to appear in proceedings and taking detainees to the courts.

44. In a letter of 5 December 1997 from the Gitega Court of Appeal to the town prison, the Court stated that, because of lack of fuel, it could no longer transport prisoners during proceedings and the prison would therefore have to take on that task. The Special Rapporteur was able personally to examine the files of several persons who had been tried in the Gitega Court of Appeal; they were well kept, but most contained mainly handwritten documents. By way of example, the file of a man under sentence of death was some 60 pages long. This Court of Appeal sits on average from 10 a.m. to 4 p.m. and deals with approximately three cases per day. Violent crimes generally require a full day's hearing.

45. Despite the above problems, the criminal chambers of Bujumbura, Gitega and Ngozi had, by the time of writing, been in operation again for almost a year, but judicial guarantees are not systematically granted to all detainees.

According to the figures supplied by the Ministry of Justice, the number of detainees stood, on 13 January 1998, at 9,491, of these persons, 7,695 were unconvicted persons awaiting trial; only 1,792 detainees had been tried and sentenced. At the time of the Special Rapporteur's visit, Mpimba prison contained 111 prisoners under sentence of death, including some women, most of whom had been arrested without a valid warrant and tried without the assistance of a lawyer. It was only on their application for judicial review that some of them, at least those interviewed by the Special Rapporteur's mission, had been able to have a lawyer's assistance. In 1997, the country's three chambers handed down 71 death sentences, 40 life sentences, 40 sentences of 20 years' imprisonment and 62 acquittals.

46. When questioned by the Special Rapporteur about the execution by hanging on 31 July 1997 of six people under sentence of death, including the director of Kimimbi school, several Burundian officials gave it to be understood that the death penalty existed in Burundi and that although it was true that Burundi had not carried out any executions since 1982, it was essential for justice to take its course even if it was inadequate in some respects. During the previous presidential mandate of Major Buyoya, no executions had taken place. The hanging of the six persons referred to above certainly did not mean that Burundi was conducting a deliberate policy of executions. The officials stated that the country was going through an exceptional phase punctuated with acts of genocide and massacres and that such bad crimes required clear signals from the Government to the citizens to ensure that they did not reoccur and that public order was maintained.

47. In this context, a number of eminent persons in Burundi informed the Special Rapporteur of their interest in the establishment of an international criminal tribunal: in their view, the rate of Burundian justice was such that there was no hope that those guilty of the events of 1993 and the ensuing period would be tried within a reasonable period of time and prisons would grow more and more crowded because denunciations and arrests were increasingly frequent. Until the true offenders - some of whom were well known in the country, but had not been tried or even arrested - were sentenced, there could be no reconciliation process worthy of the name and consequently no satisfaction or peace of mind for the victims' families.

48. Despite this rather gloomy picture of the conditions in which Burundian justice functions, the Special Rapporteur would like to highlight the encouraging reactions he observed among many of the people to whom he spoke in Burundi and abroad about the legal assistance programme, the gradual implementation of which since February 1997, over five sessions of the country's criminal chambers, has slowly won the trust of often initially doubtful local partners. Today, the Burundian authorities, the Ministry of Justice, the Burundian Bar Association and the associations of lawyers taking part in the legal assistance programme acknowledge its utility and its role - modest though that may be compared with the needs of untried prisoners in Burundi - in supporting the administration of justice, encouraging magistrates in their extremely difficult task and despite the inadequacy of the resources engaged, gradually enabling Burundian lawyers and magistrates to discover possible new synergies in their respective spheres of work.

49. Since February 1997, the legal assistance programme has had the valuable assistance of six foreign lawyers, mostly African, who are recruited when sessions of the criminal chambers are held at Bujumbura, Gitega or Ngozi, and work alongside their Burundian colleagues to defend both accused and victims. Provided that adequate financial resources are allocated to this programme, a technical support team is scheduled to be made available to the lawyers again in order to monitor and transmit to them the agenda for the sessions, the lists of hearings and correspondence for pre-trial review or the preparation of case files, and to translate files, receive the claimants, etc. The experience accumulated by the foreign lawyers and their comments have proved extremely useful for gradually improving the implementation of this programme, which genuinely deserves regular and committed support by the international community.

50. The programme's basic goal is therefore to contribute principally through the strengthening of the judicial system, to a return to peace and national reconciliation and to the institution of a culture and democracy conducive to the restoration of a constitutional State in Burundi. In the opinion of the Special Rapporteur, it would be idle for the international community to await the advent of democracy in Burundi before deciding to support the programme, which will only be useful insofar as it can be incorporated into the present administration of justice in Burundi and attempt little by little to involve, support and stimulate the efforts of the partners concerned.

2. Recent initiatives in promoting human rights

51. The Special Rapporteur welcomed with great satisfaction the appointment in the summer of 1997 of the new Minister for Human Rights, Institutional Reform and Relations with National Assembly, Mr. Eugène Nindorera, who was formerly Chairman of the Technical Commission on preparations for the national debate and had also worked in the past as human rights education programme officer at the United Nations Centre for Human Rights and as President of the Ligue de défence des droits de l'homme (Burundian Human Rights League, ITEKA).

52. He also noted the more regular contacts between the Burundian authorities and the human rights Observer Mission within the liaison body which is now under the auspices of the Minister for Human Rights and where information concerning allegations of human rights violations collected by observers and the follow-up given them is exchanged on a weekly basis. While seeing in this a stronger desire on the part of the authorities to be more transparent in respect of violations, the Special Rapporteur reaffirms the need for human rights observers to have appropriate working conditions for their inquiries, so that they can investigate completely independently the allegations submitted to them and rapidly verify the facts in situ, provided, naturally, that security conditions permit.

53. Having attended the opening of the celebrations for the forty-ninth anniversary of the Universal Declaration of Human Rights, the Special Rapporteur wishes to pay tribute to the brave statement of the Minister for Human Rights, particularly his words concerning the questions raised in Burundi by the issues of the right to life and of genocide. He also welcomes the new approach to human rights which the Minister intends to promote, doing

away with a narrow view marked by the weight of political and ethnic divisions, and promoting instead the noble traditions and moral values formerly observed in Burundi with their scrupulous respect for human life and deep-rooted attachment to the ideas of justice, equity, tolerance and honour as embodied in the traditional institution of Ubushingantahe.

II. COMMENTS

54. During this latest visit, the Special Rapporteur noted that security conditions had improved over a large part of the country. However, security in a context of civil war, as obtains in Burundi, is always uncertain. First of all it must be admitted that security varies from province to province, and also that the various components of Burundian society do not benefit from it to the same extent. In the present situation, security continues to be highly unstable.

55. During the Special Rapporteur's stay, the provinces of Cibitoke, Bubanza and Kayanza, on the edge of the Kibira forest, Bujumbura Rural, and the frontier region with Tanzania were still subject to rebel incursions. In Bujumbura, a more substantial police presence in several districts of the city, day and night, has considerably eased the movement of people and goods. The main routes into the capital are closely controlled by numerous military and police checkpoints, which are sometimes attacked by rebel groups. 4/

56. It must be admitted that the populations of the urban centres like Bujumbura and Gitega are better protected than those of the collines, which often lack basic community infrastructures around which people can group. The dispersed settlement of the collines makes it extremely difficult for the provincial civilian or military authorities to protect the peasants in the event of disturbances or attacks.

57. The security of the people in the camps is very precarious, given the rudimentary and makeshift nature of their accommodation and the inadequate resources available to the Burundian army to protect them from rebel attacks.

58. Although the living conditions of certain population groups have become more normal, security remains very uncertain in the country overall. That was made very apparent by the tragic events of 1 January 1998, in the environs of the international airport of Bujumbura, when more than 200 people were killed. Early on 6 January, another incident occurred in the village of Maramvya, where some 2,000 persons had taken refuge following the Rukamaru massacre. On 20 January, rebels of the Parti pour la libération du peuple hutu (PALIPEHUTU) allegedly killed 32 people in a camp in north-west Burundi and on 21 January, 13 persons, including a soldier, are said to have died in an attack by a rebel group in Rumonge commune, more than 50 kilometres south of the capital, on the shores of Lake Tanganyika.

59. From the information he has collected, the Special Rapporteur considers that the most serious human rights violations take place in the course of military operations or rebel attacks or following clashes between the army and rebels in the provinces of west and south Burundi. It should nevertheless be added that the number of massacres, which last year were still causing hundreds of victims, seems to have declined.

60. On the other hand, military operations in the collines have become more frequent and people are still being killed in them. Sometimes, even if the rebel action is limited, the military retaliate with heavy artillery and engage in major cleaning-up operations. There are also many victims among the military, particularly in Bururi and Bujumbura Rural. These comments concern only zones to which human rights observers and other representatives of institutions of the United Nations system have access. The Special Rapporteur is not in a position to pronounce on the situation in the so-called "red" zones which are off-limits to humanitarian aid.

61. In the Special Rapporteur's opinion, rebel activities have increased in recent months because of dissension within the various rebel groups, particularly the Front pour la défense de la démocratie (FDD), PALIPEHUTU and the Front de Libération nationale (FROLINA). These instances of account-settling among rebels in the field are still causing victims among the civilian population.

62. The Government has taken a number of steps to try to deal with this situation. First of all, it has endeavoured to enrol large numbers of young men and women who are about to complete their higher studies in a mandatory civic service scheme. This has appreciably reduced the hold of extremist groups over young people and is a positive step. However, this civic service seems to bear a more military than a civilian stamp.

63. The Burundian authorities are in the process of including a more specifically human rights-oriented component in the mandatory civic service. This rectification is intended to prevent a situation where militarization of Burundian society, particularly of young people, becomes the price to be paid for combating extremism. However, according to certain sources, it has not yet been possible, in recruiting for this mandatory civic service, to ensure a more balanced representation of the two major ethnic components of the population.

64. The Special Rapporteur has taken note of the measures taken by the civilian and military authorities to involve the population more closely in the night-time patrols in towns and on the earth roads of the collines. The testimony he collected from wounded civilians, however, particularly in Bubanza hospital, shows how questionable such measures can be.

65. They endanger the population when the military authorities ask civilians to take part in military-type activities. According to the allegations received, the peasants are often required to advance in front of military patrols to locate mines and help to defuse them. The peasants are also asked to carry ammunition and other war matériel or to go for food across danger zones at the risk of their lives. If the civilians seek to evade or refuse such tasks, they are harassed or sometimes severely punished.

66. The Special Rapporteur wonders whether the formation of self-defence groups from among the town or collines populations, or the participation of civilians in military-type tasks does not constitute abdication by the Burundian State of its governmental responsibilities.

67. The Special Rapporteur stresses the fact that these populations have, whatever their ethnic or social origins, a legitimate right to protection by the agents of the State. It is the duty of every Government to enable its citizens to live in peace and security. The Government should not delegate its own duties to its citizens, particularly if the participation of civilians involves jeopardizing their safety, or seriously violating human rights and international humanitarian law.

68. Where the rebels are concerned, the information available to the Special Rapporteur is very succinct, but he did observe during his visit to Burundi changes in their relations with the population. Attacks on the population now seem less selective and target the two main ethnic components of the population. The rebels have not only destroyed numerous schools, particularly in Bujumbura Rural, but also kidnapped school-age children and adolescents to force them to join their ranks.

69. The population increasingly fears direct contacts with the rebels and prefers in some cases to cooperate with the army or the civilian administration in order to be better protected. The rebels for their part take revenge by harassing or taking reprisals against civilians who refuse to follow them. It is in this new context of the relations between the population and the army on the one hand and the population and the rebels on the other that the question of the regroupment camps should be analysed.

70. The policy of regroupment is not a spontaneous creation of the present Government; the previous administration began early in 1996 setting up camps where it grouped the populations of certain areas under the protection of the army. In a number of instances, the camps were used only for the duration of the fighting; in other cases they were kept open after the clashes had ended. According to information reaching the Special Rapporteur, there were at the end of July 1997 some 600,000 affected persons living in regroupment camps and camps for displaced persons in Burundi, mostly in the provinces of Karuzi, Kayanza, Muramvya, Bubanza and Cibitoke, but also, to a lesser extent, in the provinces of Bururi and Bujumbura Rural. Regrouped persons alone accounted for approximately 245,000 individuals living in 46 camps.

71. The Special Rapporteur noted with satisfaction that the operations to return these populations to their home collines were already well under way in several of the provinces concerned and were continuing. He received confirmation of this when he visited Kayanza province, where the regroupment site to which he had gone had been largely emptied of its residents. The authorities had established timetables for returning people to their homes. United Nations agencies and humanitarian organizations, in particular the International Federation of Red Cross and Red Crescent Societies, had come forward to arrange the distribution of return packages for affected families on their return.

72. The Special Rapporteur was informed of the various forms of restitution of the goods pillaged during the 1993 events. The peasants from the collines declare the goods they have allegedly lost to the civilian authorities. These authorities then look for the offenders, so that the stolen goods can be returned. When the offenders cannot be found, the cost of reimbursement is borne jointly by all the inhabitants of the colline. For example, a cow costs FBu 150,000 and a goat FBu 50,000.

73. Although these practices are neither official nor uniformly applied throughout the country, there is a risk, given the climate of insecurity and the lack of legitimacy of some local administrations, that the restitution of goods, justified in principle, will degenerate into mere settling of accounts among the inhabitants of the collines. It could also become an instrument of arbitrary repression if chefs de zone resort to the military or police authorities in order to guarantee restitution.

74. Concerning political developments in Burundi, the Special Rapporteur notes some positive aspects which he would like to stress. While the present Government resulted from a coup d'état, the nature of the regime should not prevent the international community from helping Burundi to lay the bases for a genuine constitutional State and democracy taking into consideration the specific nature of Burundian society. One contribution expected from the international community would be public recognition of the positive initiatives taken by the current authorities. The Special Rapporteur feels that simply continuing to criticize the present Government and isolating it internationally are not conducive to peace and national reconciliation.

75. The Special Rapporteur notes that despite contradictory measures such as the unfortunate ministerial order of early December 1997 suspending the Front démocratique pour la défense du Burundi (FRODEBU), the dialogue between the Government and National Assembly has nevertheless made progress. For example, at the closure of the last parliamentary session of 1997, the Prime Minister went to the National Assembly to submit the Government's proposals on the peace process. Major Buyoya and the President of the Assembly continue their dialogue despite the travel ban on, and judicial proceedings against Assembly President; the Minister for Human Rights, Institutional Reform and Relations with the National Assembly informed the Special Rapporteur of the establishment of a joint commission, comprising two members of Government, two FRODEBU parliamentarians and two other members of Parliament representing the Union pour le progrès national (UPRONA). This joint commission is expected to travel in the provinces and abroad in order to give greater depth to the internal national debate and advance the negotiations.

76. The Special Rapporteur is very gratified by the Government's efforts to promote a human rights policy. The Minister for Human Rights, Institutional Reform and Relations with the National Assembly is playing a positive role in the dialogue with the field office of the High Commissioner for Human Rights in Burundi, both with its technical cooperation component and with the human rights Observer Mission, particularly with the liaison body established by the Burundian authorities.

77. However, the Special Rapporteur expressed to the Burundian Government his deep dismay at the six executions which took place on 31 July 1997; he gave it to be understood that they were harmful to the Government's image and to the peace and reconciliation which it was endeavouring to promote. In the present context, further executions could only hinder the authorities' efforts to find a way out of their isolation.

78. The Special Rapporteur is also concerned about the latest developments in the trial of military personnel accused of participation in the 1993 coup and the assassination of President Ndadaye. It is the lower ranks who are the subject of the most serious accusations, while high-ranking officers are being prosecuted for minor offences only. International public opinion might thus

have the impression that the legal authorities do not dare to come to grips with the people who are really behind these crimes.

79. The Special Rapporteur is also concerned about the turn taken in discussions on the genocide issue in Burundi. In his opinion, not only should those involved in the genocide or massacres of one or other of the ethnic components of the country be prosecuted, but Burundians as a whole should be brought to admit the fact that, over and above the atrocities that were committed, enormous numbers of innocent Burundian citizens perished, plunging tens of thousands of families into grief. Despite the ideologies which each of the ethnic components carries with it, it is undeniable that their leading élites bear a heavy responsibility since Burundi's independence in inspiring these atrocities and mobilizing those which took part in them.

80. As the Special Rapporteur endeavoured to show in his most recent report to the General Assembly, he considers that the economic sanctions imposed by the countries of the subregion are having a disastrous effect on the general population of Burundi. The imposition of the sanctions, accompanied by numerous attacks on civilians throughout the country, worsened the lot of the general public and increased the country's dependence on international humanitarian assistance. Sanctions should not be used to punish a whole people. They should be a temporary means of pressuring a Government which has jeopardized international peace. They should also bear some proportion to the goals to be achieved. Lastly, sanctions should always be accompanied by dialogue with all the parties concerned.

81. No less a figure than Pope Jean Paul II, when commenting recently on sanctions, in essence stressed that an embargo as defined by law is an instrument to be used with great discernment and remains subject to strict ethical and legal criteria. It is essential always to anticipate the humanitarian consequences of sanctions and to ensure that sanctions are kept in due proportion to the evils which they endeavour to remedy. 5/

82. The Special Rapporteur believes that economic sanctions used as a means of coercion have proved ineffective in Burundi, as elsewhere, because they have not been strictly applied, while means of evading them are encouraged by the very behaviour of some of the countries which decreed them. Today, every country has its own interpretation of the requirements imposed on the Government of Burundi and of that Government's responses to them. The sanctions have also created economic opportunities for various entrepreneurs who have taken advantage of the sharp increase in the prices of basic commodities in Burundi.

83. The effects of the social and political crisis that has prevailed in Burundi since 1993 have been further accentuated by the imposition of the sanctions. The economy has suffered as much from the crisis in general as from the effects of the economic sanctions and the progressive withdrawal of the assistance derived from bilateral cooperation. The Special Rapporteur considers, therefore, that the time has come for a serious assessment of the utility of maintaining the economic sanctions. It is urgently necessary to consider their humanitarian consequences, if possible by means of an independent mechanism. Since the events of 25 July 1996, Burundi has been dangerously isolated by its neighbours in the Great Lakes region and by the international community. Bearing in mind the fate of the victims of the conflict in Burundi, the Special Rapporteur considers that this diplomatic

isolation should cease immediately. The countries variously involved with Burundi have an essential role to play in helping to defuse the crisis by creating the conditions necessary internationally to enable the Burundian participants in the crisis to conclude a ceasefire as soon as possible and to initiate negotiations.

84. The Special Rapporteur notes with great concern the impasse reached in the mediation undertaken by former President Nyerere, known for his moral and intellectual authority. It is a matter of urgency for the countries of the region, the Organization of African Unity and the United Nations to seek, along with former President Nyerere, the most appropriate means of putting this mediation rapidly back on track.

III. RECOMMENDATIONS

A. To the national authorities

85. The Special Rapporteur reiterates his urgent appeal to the Burundian authorities to defer the 71 death sentences and 40 sentences of life imprisonment handed down by the country's three criminal chambers for 1997 alone, at least until the peace negotiations have been completed and a reformed judicial system, capable of playing its role with complete independence and impartiality, has been established.

86. The Special Rapporteur asks that the conditions of detention of persons sentenced to death should be improved without delay, pursuant to the commitments made by the Government of Burundi when it ratified the main international human rights instruments.

87. The Special Rapporteur asks that the judicial proceedings against former President Bagaza, currently subject to restricted residence, and against the President of the National Assembly, who does not have the right to travel, should be completed without delay in order to enable the persons concerned to appear before the appropriate judicial bodies, with the assistance of their lawyers. The intolerable accumulation of delays in these proceedings are detrimental to the dialogue among the various political parties.

88. While welcoming the positive dialogue initiated by the Burundian authorities with the human rights Observer Mission, in particular through the liaison body, the Special Rapporteur asks those authorities to improve and expedite investigation procedures in cases of summary execution, sexual abuse, torture or excessive use of force by the Burundian army and by the police, and to initiate proceedings against the offenders.

89. The Special Rapporteur once again draws the attention of the Burundian authorities to the urgent need to ensure respect for the standards of international humanitarian law and human rights, which prohibit strikes on civilian targets during military operations, indiscriminate attacks on civilians and the pillaging and arbitrary destruction of their property.

90. While congratulating the Government of Burundi on the return of affected persons from the regroupment sites and camps for displaced persons, the Special Rapporteur requests it to implement rapidly its policy of resettling such persons on their home collines or on intermediate sites, if security conditions so require.

91. The Special Rapporteur asks the Burundian authorities not to recruit young people under 18 years of age for the army or mandatory civic service and to ensure that such recruitment is never imposed by force and that it includes all the ethnic components of the population without distinction.

92. The Special Rapporteur asks the Government to prosecute the instigators of practices comparable with forced labour and the use of regroupment camp residents in tasks of a military nature.

B. To the rebels

93. The Special Rapporteur reminds the rebel leaders that the principles governing human rights standards and the rules of international humanitarian law apply to them as much as to others. They are therefore expected to ensure that their subordinates respect them and remain liable for their acts even after hostilities have ceased.

94. The Special Rapporteur reminds the rebel leaders that all attacks on civilian populations or facilities such as schools, and that all behaviour leading to sexual abuse or to torture or the pillage or destruction of civilian property are strictly prohibited by human rights standards and the rules of international humanitarian law.

95. The Rapporteur further reminds the rebel groups that it is forbidden to make use of forced labour, to abduct children or young people, or to resort to coercion to force civilian populations to remain within the limits of territories temporarily under their control. It is incumbent on the rebels to ensure civilians' freedom of movement and domicile on the land which they occupy.

96. The Special Rapporteur solemnly appeals to the rebel groups to cease using mines, which mostly injure or kill civilians, and to demine the territories they frequent.

C. To the international community

97. The Special Rapporteur asks the United Nations to play in the quest for a peaceful solution to the Burundian conflict and the search for greater cooperation between the countries of the Great Lakes region and the Organization of African Unit, the crucial role which, as was recalled by several members of the Security Council in December 1997, devolves on it.

98. The Special Rapporteur hopes that the mission of inquiry established by the Secretary-General to investigate incidents which took place at the frontier between Burundi and Tanzania will be able to start work as rapidly as possible. He firmly believes that it is only through objective and independent investigations that the tension existing between the two countries can be reduced.

99. In this connection, the Special Rapporteur urges the Office of the United Nations High Commissioner for Refugees to take steps in conjunction with the Tanzanian authorities to move the refugee camps near the frontier with Burundi further into Tanzania, the refugees' presence being, in his view, a permanent factor of tension between the two countries.

100. The Special Rapporteur calls on the international community to make a serious evaluation both of the utility of maintaining the economic sanctions against Burundi and of the Burundian authorities' concrete efforts to initiate an internal dialogue and a nationwide peace process, which should be taken into account.

101. The international community must help the Government of Burundi to institute a genuine policy of social rehabilitation of the affected populations, whether they are displaced persons or have been regrouped, so that the peace process initiated in the country becomes a tangible sign of reconciliation, at least in those provinces where security conditions permit.

102. The Special Rapporteur urgently appeals to donor countries which have suspended their bilateral health assistance projects in Burundi to reverse their decision and support the new strategy introduced by the Ministry of Health to combat epidemics such as typhus or AIDS which cause ravages among the population of Burundi.

103. The Special Rapporteur recommends that the international community support the initiatives that emerge from the joint commission made up of members of the Burundian Government and parliamentary representatives of the country's two main political parties, and the efforts by some Western States and the Inter-Parliamentary Union to back this commission's travel abroad.

104. The Special Rapporteur urgently appeals to the international community; and in particular to the countries that formerly had significant connections with the Great Lakes region, firmly to support the human rights Observer Mission so that it can without further delay increase the number of observers deployed in Burundi, open at least three regional offices there and provide them with the necessary security and communications personnel and equipment.

105. The Special Rapporteur urgently appeals to the international community, and in particular to be countries that formerly had significant connections with the Great Lakes region, to continue (or make a firm commitment to) an urgent and coordinated policy of financial support for the legal assistance programme, which is likely to be suspended in the very near future. In the present context in Burundi, this programme represents one of the rare real signs of the solidarity of the international community and it is imperative that it be maintained and encouraged.

106. The Special Rapporteur recommends, as in his previous reports, that until a ceasefire has been established and a process of transition towards democracy genuinely initiated an international embargo should be decreed on sales of arms, military matériel and services to all parties in the Burundian conflict. He stresses that the countries of the Great Lakes region in particular and the international community should strongly support the application of this embargo vis-à-vis all parties to the conflict.

107. The Special Rapporteur once again appeals urgently to the Organization of African Unity and the international community, particularly countries which manufacture and export arms, to participate in such a moratorium in the Great Lakes region.

108. The Special Rapporteur proposes that the International Commission of Inquiry on the sale of arms established for Rwanda should be reactivated and

its mandate extended to Burundi. He once again draws the attention of the international community to the urgency of implementing the recommendations contained in his most recent report to the General Assembly (A/52/505, paras. 109 and 110).

109. The Special Rapporteur recommends that the question of an international criminal tribunal should once again be considered by the United Nations once the conditions for the establishment of such a body have been met in Burundi, namely, the institution of a ceasefire, the existence of internal dialogue, the successful conclusion of the negotiations and the reform of Burundian institutions.

110. The Special Rapporteur is convinced that the solutions to the Burundian crisis must be based on a regional approach and recommends that a conference should be held in the Great Lakes region on the arms traffic, security and human rights.

Notes

1/ In 1997, the Government assessed the housing reconstruction programme for the country as a whole at 34 billion Burundian francs, or approximately US$ 125 million. It has already devoted FBu 600 million, or approximately US$ 2 million, to this activity.

2/ Because of the combined effects of the conflict, rebel activity and economic sanctions, there are no more any seeds or fertilizers in Burundi. Before the sanctions were imposed, both products were produced in part by the Agronomical and Zootechnical Research Institute, which was 80 per cent donor financed. For the country as a whole, livestock losses, which have been increased by epidemic diseases, are estimated at 30 per cent for cattle and 40 per cent for small livestock.

3/ Chrétien, Jean-Pierre, Le Défi de l'ethnisme, Rwanda et Burundi: 1990-1996, Paris, Editions Karthala, 1997, pp. 363-364.

4/ See also Lecompte, Dominique, "Une ville africaine dans la tourmente, la guerre à Bujumbura", Afrique contemporaine, Special issue, 4th quarter 1996, p. 164.

5/ See the document prepared by the Holy See: The position of the Holy See Regarding the Implementation of General Assembly resolution 50/96 on Economic Measures as a Means of Political and Economic Coercion against Developing Countries.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the human rights situation in the Republic of Equatorial Guinea submitted by Mr. Alejandro Artucio, Special Rapporteur of the Commission, pursuant to Commission resolution 1997/67

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INTRODUCTION

1. The situation of human rights in the Republic of Equatorial Guinea has been publicly considered by the Commission on Human Rights since 1979. At its forty-ninth session, in resolution 1993/69, the Commission requested its Chairman, following consultations with the Bureau, to appoint an individual of recognized international standing in the field of human rights and entirely familiar with the situation in Equatorial Guinea as special rapporteur of the Commission, with a mandate to make a thorough study of the violations of human rights by the Government of Equatorial Guinea on the basis of all the information which he considered relevant, including information furnished by intergovernmental and non-governmental organizations and by private individuals, and any documentation provided by the Government of Equatorial Guinea. That resolution was approved by the Economic and Social Council in decision 1993/277, and the Chairman of the Commission appointed Mr. Alejandro Artucio as the Special Rapporteur.

2. For the past five years, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights and the United Nations Development Programme (UNDP) have paid special attention to the situation in Equatorial Guinea and have sent several advisory missions there. By agreement between both agencies, Mr. Eduardo Luis Duhalde Hubert was appointed as the Human Rights Consultant in Equatorial Guinea for the purpose, established in the terms of reference, of, inter alia, assisting the Special Rapporteur in all respects, and in particular providing him with reliable and comprehensive information collected in situ on the human rights situation, and helping the Special Rapporteur to define, in agreement with the Government of Equatorial Guinea, the most appropriate legislative and institutional framework for ensuring an effective improvement in the human rights situation in that country.

3. Of the missions undertaken during this period, the United Nations/UNDP mission of 7 April 1993 deserves special mention. Its aide-mémoire constituted a genuine plan of action submitted to the Government of Equatorial Guinea for consideration. Mention should also be made of the advice given concerning preparations for elections, and technical assistance and advisory services in the area of human rights.

4. At its fifty-fourth session, the Commission on Human Rights considered the fourth report (E/CN.4/1997/54) of the Special Rapporteur, Mr. Alejandro Artucio, and adopted without a vote resolution 1997/67 of 16 April 1997. In the resolution, the Commission, inter alia, noted with interest that the continuity of the process of democratization had led the Government of Equatorial Guinea and the political parties of the opposition to resume their political dialogue in order to revise the National Pact concluded in 1993 (para. 3) and invited the Government, firstly, to take the necessary measures to guarantee respect for the electoral law in force in the country in order to facilitate the free participation of all political parties in the legislative electoral process in 1998 (para. 4) and, secondly, to reform the electoral legislation in accordance with the recommendations of the United Nations electoral adviser and those of the Special Rapporteur (para. 5). The Commission encouraged the Government to implement the other recommendations made by the Special Rapporteur (para. 8) and to pay particular attention to the enjoyment of economic, social and cultural rights (para. 6) and to continue the positive efforts it had

already undertaken to put an end to the relegation of women to an inferior position and discrimination against them, as well as to extend their effective participation in the educational, professional, social and political spheres (para. 7).

5. The Commission on Human Rights welcomed the improvement in the conditions of prisoners and detainees and requested that these efforts continue in accordance with the Special Rapporteur's recommendations (para. 9). It requested the High Commissioner/Centre for Human Rights to establish a technical cooperation programme for strengthening the national capacities of Equatorial Guinea in the field of human rights (para. 10). It also requested the High Commissioner/Centre for Human Rights and the Special Rapporteur to continue their technical assistance projects in partnership with the Government of Equatorial Guinea and in cooperation with the United Nations Development Programme and other United Nations agencies working in the field of human rights (para. 11).

6. The Commission on Human Rights decided to renew the mandate of the Special Rapporteur for one year and requested him to report to the Commission at its fifty-fourth session (paras. 12 and 14). It also decided to consider the question at its fifty-fourth session under the agenda item entitled "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories" (para. 15).

I. ACTIVITIES IN SITU

7. The Special Rapporteur undertook his seventh official mission to Equatorial Guinea from 30 November to 7 December 1997. On this as on previous occasions, he was accompanied by the Human Rights Consultant, Mr. Eduardo Luis Duhalde Hubert, who provided valuable and indispensable support.

8. It should be noted that the Special Rapporteur and the Consultant had planned to make a 15-day visit in October 1997, but this was postponed, at the request of the Government, on the grounds that because of various government activities it would be difficult to receive the mission at that time. When authorisation was finally obtained, it was only possible to make a one-week visit during December, if this report was to be prepared within the time limits laid down by the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights.

9. During its visit, the mission was received by the following dignitaries: H.E. the Minister for Foreign Affairs and Cooperation, Miguel Oyono Ndong Mifumu; H.E. the Minister of Justice and Worship, Ignacio Milam Tang and the Deputy Minister of Justice and Worship, Angel Masié Mibuy; H.E. the Deputy Minister of the Interior and Local Communities, Angel Eseno Abaha; H.E. the Prime Minister and Head of Government, Angel Serafin Seriche Dougan; H.E. the Deputy Prime Minister and Minister of the Civil Service and Administrative Reform, Francisco-Javier Ngomo Mbengono; and, finally, by His Excellency the Head of State and President of the Republic, Mr. Obiang Nguema Mbasogo. Furthermore, the mission also received constant and generous support from the Human Rights Counsellor and Director-General of Justice,

Worship and Prison Institutions, Mr. Rubén Mayé Nsue Mangue. The meetings took place in an atmosphere of understanding and cordiality.

10. In an extended meeting with the mission, the Head of State and President of the Republic confirmed his political will to press ahead with the democratization process, stressing that despite the difficulties faced by the sub-region it had proved possible to preserve a climate of peaceful coexistence in the country, with no political assassinations, forced disappearances or extrajudicial executions. He hoped that the international community would assist Equatorial Guinea in the task of developing civil, political, economic and social rights, which were indispensable if democracy was to be strengthened.

11. The Special Rapporteur wishes to make it clear that, as on previous occasions, the Government and other authorities of Equatorial Guinea cooperated with him fully in the accomplishment of his mission and did nothing to impede his access to the various places he wished to visit or to those whom he wished to interview.

12. The visit to the island of Bioko was affected by time constraints and the need to observe the functioning of the central State administration in the capital. The Special Rapporteur is considering the advisability of shortly making another visit with the priority objective of assessing in situ the situation in the mainland region of Equatorial Guinea (the Province of Rio Muni), as requested by the Head of State.

13. On this occasion a particular concern was to have intensive and easy contact with the various sectors of Equatorial Guinea's civil society, especially with the country's political forces and those involved in the defence of human rights and fundamental freedoms. The Special Rapporteur interviewed those who had been arrested and detained and had subsequently regained their freedom and those who complained of having been subjected to ill-treatment, persecution or curtailment of their rights. The mission included a visit to Malabo public prison (known as "Black Beach"), where the Special Rapporteur was able to talk freely and in private to prisoners. After the five releases arranged at the request of the mission the number of detainees and prisoners who could be regarded as having been incarcerated because of their opinions or on political grounds was very small (three or four).

14. Since they wished to obtain information on the progress of democratization as well as on the human rights situation, the Special Rapporteur and the Consultant maintained close contacts with the accredited diplomatic representatives in Malabo of the principal countries making up the donor community, particularly with the Ambassador of France, Mr. Gérald Brunet de Courssou, the departing Ambassador of Spain, José Maria Otero de Leon, and his successor don Jacobo Gonzalez de Arnau, who had just taken up his duties; with the Representative of the European Union, Mr. Ignacio Sobrino; with the Resident Representative of the United Nations Development Programme (UNDP) in Equatorial Guinea, Mrs Sylvie Kinigi, who provided support and cooperation, and her staff; and also with the Representative of UNICEF in Equatorial Guinea.

II. ECONOMIC AND SOCIAL SITUATION

15. Various international organizations have recently conducted specific missions in Equatorial Guinea and have produced studies and reports on various aspects of its economic and social situation. These contain appraisals which deserve to be given prominence and coincide with the situation described in this report. Thus, the Evaluation Mission of the Technical Cooperation Programme in the field of Human Rights of the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, which visited Equatorial Guinea between 3 and 16 February 1997, noted in its report of June 1997 (Part II.1.2) that "gratuitous use of force combined with the non-publication and unavailability of legal texts and documents which should form the backbone of the country's governance, have resulted in an abstract notion of the rule of law. In fulfilling their duties, government authorities often ignore the existence of the legal authority from which their power flows and the limits of their competence as specified by law. On its face, this deficiency partly accounts for the rampant impunity enjoyed by State officials..."

16. An International Monetary Fund (IMF) mission, which visited Malabo in September 1996, produced a report which diagnosed the country's situation as follows. Equatorial Guinea is faced with a narrow productive base and extreme poverty. The human capital level is very low and the country lacks the most basic infrastructure. The judicial system is inadequate, the administrative capacity seriously limited and the financial system rudimentary. Even worse, the country is suffering from persistent fiscal mismanagement and from lack of transparency and corruption in government finance.

17. Likewise, in relation to the extreme poverty which forms an obstacle to human development and is undermining the operation of human rights in the country, the United Nations Development Programme (UNDP) in its Assessment Note for the establishment of the framework of cooperation with Equatorial Guinea (April 1997) points out (II.B.7) that inequalities continue to abound, with more than 80% of the national income being amassed by 5% of the population.

18. Other data on the economic and social system: Equatorial Guinea is classified among the countries having the lowest level of human development. Infant mortality is 111 per thousand, maternal mortality is 352 per 100,000 live births, the illiteracy rate is 22.9% and life expectancy at birth 48.2 years. Only 32% and 37% of the population has access to drinking-water and sanitary services respectively. These last two percentages are of particular significance inasmuch as they are directly related to the incidence of the transmissible diseases which are the commonest cause of death. According to the General Census of 1994, Equatorial Guinea has a population of 406,151, divided almost equally between men and women, with a growth rate of 2.9% per year, which implies a doubling of the population every 30 years.

19. Equatorial Guinea is a significant oil producer with an output of 70,000 barrels per day. At the time this report was prepared, there was little evidence of the additional income derived from extracting and exporting oil having filtered its way down to the mass of the population. In fact, there has been no noticeable progress in health care, education, housing, public works, etc. that would indicate an improvement in the quality of life of the people. This question and the full utilization of Equatorial Guinea's natural resources,

together with the allocation of revenue to development plans, were examined at the National Economic Conference held in the city of Bata. It was a very good sign that the Conference was attended by all the political groupings and representatives of civil society. The participants made an extensive series of proposals contained in a document entitled "Medium-Term Economic Strategy 1997-2001".

III. SITUATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

20. The extent to which civil, political, economic, social and cultural rights are enjoyed and respected will be analyzed in terms of the level of implementation by the authorities of the recommendations repeatedly formulated by the United Nations Commission on Human Rights in previous years, and in particular those contained in resolution 1997/67 which the Commission adopted on 16 April 1997.

A. Political rights and activities

21. Process of democratization and elections: In this connection, the above-mentioned resolution of the Commission on Human Rights of 16 April 1997 states that the Commission:

- notes with interest that the continuity of the process of democratization in Equatorial Guinea has led the Government and the political parties of the opposition to resume their political dialogue in order to revise the National Pact concluded in 1993 (para. 3);

- invites the Government, in anticipation of the legislative elections to be held in 1998, to take the necessary measures to guarantee transparency and respect for the electoral law...in order to facilitate the free participation of all political parties (para. 4);

- also invites the Government to reform the electoral legislation in accordance with the recommendations of the United Nations electoral adviser and those of the Special Rapporteur contained in his report (para. 5).

22. The political dialogue pursued between 10 February and 25 April 1997 yielded the "Document on the Evaluation of the National Pact and Legislative Agreements 1997" which gave rise to great expectations of a decisive step forward in the process of democratization and in the conditions of governability of the country. This document, agreed by the Government and the political parties and expressly approved by the Council of Ministers, is divided into three main parts: (a) Evaluation of the National Pact of 1993; (b) Code of Conduct of the legalized political parties; and (c) Legislative Agreements.

23. The National Pact has 15 articles which have been ratified and supplemented, after evaluation, and can be summarized as follows:

(a) The binding and obligatory nature of the National Pact of 1993 and the evaluation of April 1997 is confirmed;

(b) It is agreed to put an end to the "intermittent arrests" which have been taking place by impressing on the authorities and party members the need for respect for human rights and the rule of law, and to require administrative and criminal liability in cases of infringement;

(c) Establishment of a commission, with representatives of the Government and the political parties, to draw up a plan for the return of those nationals of Equatorial Guinea who find themselves outside the country and would like to come back;

(d) The Government declares its complete readiness to legalize any application for the recognition of new political parties that meets the requirements of the law;

(e) It is agreed to strengthen "in order that they may be given proper material form, the individual public freedoms and freedom of movement, together with the guarantee of the inviolability of the home, public offices and correspondence" by issuing a presidential decree requiring strict respect for those freedoms and expressly prohibiting extrajudicial arrests, with the application of legal measures against offenders;

(f) It is agreed to set up a Government-political party commission responsible for guaranteeing the parties access to the media;

(g) An investigation commission, with representatives of the Government and the political parties, is set up to oversee the strict implementation of Agreement 7 of the National Pact of 1993 which is intended to ensure the free development of the political parties and the application of civil and political rights;

(h) An undertaking is given to establish "a general framework of coexistence" by adopting a series of measures, including the organization of seminars and joint campaigns to instil democratic values, and by correcting all situations inconsistent with the high aims pursued. To this end, the active presence of members of the armed and security forces, judges, magistrates and public prosecutors, as well as ministers of religion of different faiths and foreign citizens, on electoral campaign committees is prohibited. Moreover, members of the armed and security forces may not join political parties. The dignity of the leaders of the political parties is guaranteed. It is provided that "the political parties shall have access to the traditional courts and Casas de Palabra". There are to be at least two meetings a year between the Head of State and the leaders of the political parties;

(i) Various financial measures are adopted, including granting five million CFA francs (approximately 10,000 US dollars) to each of the political parties and establishing a Fund for Democracy under the Ministry of the Interior to provide financial assistance for the parties in the run-up to the 1998 legislative elections;

(j) Various measures are agreed in connection with the in-depth review of the electoral roll, starting in October 1997, which is being entrusted to the joint commission (Government and political parties) established by the National

Pact of 1993. The political parties are guaranteed free and direct access to the data and sources of the electoral roll;

(k) It is agreed that the Government shall call legislative elections 60 days before the present session of the legislature expires (at the end of November), that the parties shall agree upon the reform of the electoral law and that international observers shall be invited to observe the elections;

(l) In order to harmonize the objectives of the rule of law and democracy, it is provided that any act of commission or omission intended to promote political violence, thereby undermining the Government, shall be repudiated and prohibited and that those who foment or engage in political violence shall be punished in accordance with the law. To the same end, foreign individuals and organizations and nationals residing outside Equatorial Guinea for six consecutive months may not lead political parties or secretly sponsor them. Likewise, foreigners residing in the country may not participate in propaganda activities;

(m) Provision is made for the operations of the supervisory and monitoring commission set up under the National Pact to be strengthened by the Government granting it a working loan and providing it with offices from which to operate independently.

24. The Agreement concluded between the Government and the political parties likewise approved a "Code of Conduct for the political parties legalized in the Republic of Equatorial Guinea" which consists of a series of articles intended to foster the development of democracy and political freedoms. These provide for the Code to be binding on all the legalized political parties and, in accordance with the Code, the parties undertake: (a) to respect each others' freedom of expression, assembly and association; (b) not to intervene in the internal affairs of other parties; (c) not to stir up conflict between communities or ethnic groups; (d) to act in defence of democratic ideals, including peace, democracy and respect for human rights; (e) not to make any statements in support of violence and to refrain from insults and personal disparagement; (f) not to bear arms and not to disturb the meetings of other parties during the electoral campaign; (g) not to intimidate members of other parties or to use force or violence.

25. Finally, the National Pact Evaluation Document establishes "Legislative Agreements" which relate to the contents of certain laws to be approved:

(a) Law on Political Parties: The reform of this law will establish that the courts are responsible for dissolving political parties; that applications for the recognition of a new party must be dealt with within 30 days; that the recognition of a party implies the recognition of its organs of information; that within their jurisdiction, before banning any political act for reasons of public order, the governors shall endeavour to reconcile the conflicting interests.

(b) Law on the Financing of Political Parties: The reform of this law will increase the amount of the contributions to party finances which natural and legal persons may make.

(c) Law on Complaints and Petitions: This will provide for the application of the time limits established by the Law on Administrative Procedures in connection with appeals, and for reasoned decisions.

(d) Law on Meetings and Demonstrations: Its reform will guarantee the following: the authorities shall approve or reject - in the latter instance giving their reasons - within 48 hours any request for a public meeting or demonstration; if this period elapses without a reply, approval shall be deemed to have been given; meetings held by the parties in their offices or headquarters shall not have to be approved by or notified to the government authority.

(e) Law on Amnesty: The Government undertakes to promulgate a Law on Amnesty which "forgives and forgets all offences of a political nature so as to guarantee personal freedom and security in the national territory".

(f) Law on Legislative and Municipal Elections and Referenda: It is agreed that the reform of this law shall abolish the provision which granted the Ministry of the Interior and Local Corporations the chairmanship of the National Electoral Council; that it shall also abolish the Provincial Electoral Councils; that the national, district and municipal electoral authorities (councils) shall consist of members appointed by the Government, the judiciary and the political parties; that the polling station officials shall be appointed by the National Electoral Board; that the secrecy of the ballot in the act of voting shall be ensured by imposing penalties on those responsible for encouraging public voting, for electoral coercion or for unlawfully preventing the casting of votes. Several of these aspects were the subject of a specific recommendation by the Special Rapporteur in his 1997 report (E/CN.4/1997/54, para. 104).

(g) Other aspects proposed by the parties will be studied with a view to their being converted into laws.

26. Point of view of the opposition parties. All the opposition parties interviewed by the Special Rapporteur and the Human Rights Consultant said that these April 1997 Agreements had not been implemented and drew attention to what they considered to be a lack of political will on the part of the Government to put them into effect. They specified, orally and in written notes in the possession of the Rapporteur: (a) that although the relevant decrees had been issued and the legislative reforms were being drawn up, the measures adopted had not been put into execution; (b) that the political parties had not been granted the financial assistance agreed and were short of funds and unable to function normally; (c) that there were still restrictions on civil liberties, especially in the mainland region, their members were still being arbitrarily detained for short periods and it was still impossible to gain access to the media (radio and television) upon which the Government could rely; (d) that the work on revising the electoral roll, at least with the comptroller of the political parties, had not been begun in October as envisaged.

27. Point of view of the Government. The accusations of the opposition parties were rejected by the senior Government officials interviewed who asserted that the Agreements of 26 April 1997 were being fully executed. As evidence of this, they provided the Special Rapporteur with copies of a series of presidential decrees and orders implementing the provisions of the Agreements.

28. These presidential decrees and orders are as follows:

(a) Decree No. 73 of 13 May 1997 prohibits the peripheral authorities from erecting barriers on the national territory in order to prevent the free movement of persons, goods and publicity material belonging to the political parties. This prohibition does not apply to barriers erected for national security or customs control purposes. Furthermore, applications for the issue of passports and visas may not be refused, these documents must be obtainable within 24 hours and the corresponding fees are reduced. Homes and offices may not be entered and searched for political reasons; letters and other correspondence may not be withheld or interfered with, except for customs reasons. Finally, the Decree declares that "extrajudicial arrest shall be abolished" and refers offenders to the courts.

(b) Decree No. 74 of 13 May 1997 establishes the Fund for Democracy which will receive voluntary contributions from natural and legal persons and share out the income equally among all the legalized political parties. It also sets up a Supervisory Commission consisting of government officials and a representative of the political parties. The Special Rapporteur was informed by the Ministry of the Interior that the current account for this Fund was recently opened and that the Supervisory Commission has also been constituted, although the Fund has not yet received any contributions.

(c) Decree No. 75 of 13 May 1997 sets out the undertaking by the Government and the political parties to prohibit any action or act of commission or omission intended to restrict the free exercise of fundamental rights and freedoms and to ensure that the political parties can pursue their activities freely throughout the national territory. The Government undertakes to punish the illegal acts of officials and law enforcement officers which impair or restrict guaranteed rights and requires the authorities to refrain from any interference that might make it difficult for the political parties to comply with art. 9 of the Constitution. Moreover, the Government pledges to prohibit compulsory contributions to the Partido Democrático de Guinea Ecuatorial from civil servants and employees of private and quasi-public enterprises who are not members of that party.

(d) Decree No. 76 of 13 May 1997 prohibits the active presence of members of the armed forces and State security services, judges, magistrates, public prosecutors and ministers of religion of various faiths on the electoral campaign committees and prohibits members of the armed forces and State security services from joining political parties.

(e) Decree No. 77 of 13 May 1997 sets up the Ad-Hoc Commission responsible for drawing up a plan for the return of Guineans living abroad. The Special Rapporteur was informed by the Ministry of the Interior that this commission was not yet functioning because the political parties had not appointed their four representatives on the body.

(f) Decree No. 78 of 13 May 1997 establishes the National Media Commission with responsibility for guaranteeing the political parties access to the State media. The Special Rapporteur was informed by the Ministry of the Interior that this commission had recently been set up and had held its first meeting.

(g) Decree No. 87 of 9 September 1997 establishes the Special Government-Political Parties Joint Commission responsible for continuously monitoring the transparency of the electoral roll. The Commission is composed of government officials and a representative of each of the legalized political parties. Although the Decree itself, in accordance with the provisions of the Document on the Evaluation of the National Pact and Legislative Agreements, specifies last October as the time of commencement of its activities, the Commission has not yet been set up as the parties have not appointed their representatives.

(h) Decree No. 88 of 9 September 1997 establishes within the Ministry of the Interior an Investigation Commission with responsibility for ensuring the objectivity of the facts in connection with breaches of the Seventh Agreement of the National Pact concerning the free development of the political parties and respect for fundamental freedoms. This Commission is not yet functioning.

(i) Presidential Order of 13 May 1997 accredits the members of the Commission for Overseeing and Monitoring the Fulfilment of the National Pact Agreements who represent the Government and the political parties. The Ministry of the Interior has told the Special Rapporteur that it has recently allocated space in one of its buildings to serve as temporary offices for the Commission and has earmarked several million CFA francs for the initial expenses. The Special Rapporteur was also informed by a member of the Commission who represents one of the opposition parties that the Commission had in fact been set up and had received complaints from various political groups, but for lack of funds had been unable to travel about the country for the purpose of verifying the facts.

29. Aware of the discrepancies between the views of the Government and those of the opposition, the Special Rapporteur, with the support of the Human Rights Consultant, was able to establish the following. On the day on which the agreements were signed (26 April 1997) the Government of Equatorial Guinea authorized the issue of cheques made out to each of the political parties in the amount of five million CFA francs (the equivalent of 10,000 US dollars), which were received by the parties. On the basis of our findings it cannot be said that the Government of Equatorial Guinea has refused to fulfil the agreements, although there has clearly been a considerable delay in implementing them, which is a matter of concern insofar as the measures agreed are of the utmost importance for establishing a climate of *détente* and a system of guarantees sufficient to permit the holding of the legislative elections planned for 1998. Although these delays could have originated in the unwillingness of elements within the government to advance the process of democratization, they are mostly attributable to the sluggishness and disorganization of the public service.

30. As for the opposition parties, there are disagreements between them which have led, for example, to the disbandment of the "Plataforma de Oposición Conjunta" (POC) and which are weakening the effectiveness of the opposition in demanding greater civil liberties and respect for human rights. Guinean civil society continues to display serious structural weaknesses and an inability to generate a network of institutions capable of maintaining its rights. This is closely related to its political, social and cultural situation and its subordination to the State power structure.

31. A draft law in the process of being adopted which is arousing concern among the opposition parties is the reform of the Law on Political Parties, approved by the Plenary Session of the House of People's Representatives in which the PDGE - the governing party - has a large majority. The draft contains a transitional clause prohibiting political coalitions in the 1998 legislative elections. This bill has been interpreted by the opposition as an attempt to prevent an opposition alliance winning the elections.

32. A final point concerning politics relates to the participation of all the political parties in the electoral process. Without prejudice to the observations made above, it is the duty of the Special Rapporteur to inform the Commission on Human Rights of the situation that has arisen in connection with the Partido del Progreso de Guinea Ecuatorial. On 18 August 1997, this political grouping was forced to disband by the Criminal Division of the Court of Appeal of the city of Malabo. The criminal action was not brought specifically against the party in question but by contumaceous judgement against natural persons who were found guilty of committing various offences in the so-called Angolan incident. Compulsory disbandment was ordered by the Criminal Division because one of those convicted - Mr. Severo Moto Nsa - held the office of chairman and leader of the party concerned.

33. Without proceeding to analyze the formal legitimacy of the sentences handed down for offences of attempted high treason against the motherland involving the recruitment of armed men to undermine the security of the State, assassination of the Head of State and unlawful possession of arms and explosives, committed in a foreign jurisdiction (Angola) by citizens of Equatorial Guinea and foreign nationals, the Special Rapporteur notes that the verdict in question does not include a reasoned statement of the arguments and grounds for disbanding the political party or establish an institutional and collective link between the illegal acts of Mr. Moto and the activities of the Partido del Progreso, since it cannot be automatically assumed that liability for the illegal acts of one party official, however important his place in the party, can be extended to the legal entity established by him, together with other officials and members, in accordance with the law. It should be pointed out that the verdict of 18 August 1997 in the second whereas clause of the proven facts states only that: "In accordance with the same line of reasoning, taking into account the content of the first of the findings concerning the National Pact Agreements and their subsequent evaluation, given the direct relationship with the accused Severo Moto Nsa, in his capacity of Leader of the Partido del Progreso, the court must order its total suppression or disbandment".

34. This decision of the court was preceded by a resolution of the Council of Ministers to the same effect, which was then turned over to the trial court, it being understood that by virtue of the April agreements "the disbanding or suppression of political parties" was the responsibility of the courts. Likewise, the Special Rapporteur has also seen a copy of complaint proceedings lodged with the Supreme Court of Justice by the Progress Party for refusal of a judicial review of the verdict in question.

B. Strengthening the legal structure of the State

35. To judge from the texts seen by the Special Rapporteur, some laws that have been approved and certain bills still before the National Parliament could involve a strengthening of the structure of the State that would enable it to achieve greater efficiency. This notwithstanding, on 30 May 1997 a law was passed which is causing concern as regards the enjoyment of freedom of expression and communication. This is Law No. 6/1997 on the Press, Publishing and the Visual Media. The unduly casuistic text contains a statement of "publishing principles" open to subjective interpretation whose violation gives rise to criminal, civil and administrative penalties. The Law also establishes a system of control over the media (registration which can be refused, prior lodgement of copies, etc.) and a code of penalties for minor, serious and very serious infringements governing the activities of the free press.

36. In its above-mentioned resolution 1997/67, the Commission on Human Rights again recommended to the authorities "the periodic and regular publication of laws, decrees and governmental acts". At the time of the Special Rapporteur's visit, insufficient publicity was still being given to the laws entering into force, to such an extent that they were unknown not only to the general public but also to sectors of the public administration, especially the peripheral authorities, who take advantage of their ignorance to deny legally recognized rights. As the Special Rapporteur has previously observed, the fact that laws, decrees and regulations are not being published regularly is a source of serious uncertainty about the law. It should be noted that, once again, the mission had difficulty in acquainting itself with the text of the laws and decrees approved during the current year (1997).

37. The Commission also recommended "accession to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the International Convention on the Elimination of All Forms of Racial Discrimination". Equatorial Guinea has not acceded to these conventions, as recommended by the Special Rapporteur, although the latter was told by senior officials that both instruments had been drawn up, the delay in approving them being attributable to the resistance encountered in some sectors of the Government.

C. Independence and impartiality of the judiciary

38. The Commission on Human Rights recommended the "adoption of legislative and administrative measures to guarantee the full independence and impartiality of the judiciary, to ensure due process of law...". There has been no evident improvement in the independence of the judiciary, nor have the functional shortcomings to which the Special Rapporteur drew attention in his report to the Commission's fifty-third session (E/CN.4/1997/54, paras. 18-21 and 97) been remedied, although the Special Rapporteur received assurances from the Minister of Justice and Worship that efforts were being made to achieve greater judicial objectivity in the handling of cases. To this end, Decree No. 95 of 8 August 1997 established the Instituto de Práctica Judicial which, however, is not yet functioning.

39. The Special Rapporteur noted with the utmost concern the imposition of a criminal penalty of imprisonment by the Office of the Head of State. This

action, on the fringes of criminal due process, could constitute an encroachment on the specific powers of the judiciary proper. The case concerned was that of the public prosecutor of the Court of Appeal of the mainland region, Mr. Victoriano Obiang Obogo, who was dismissed for "irregularities committed in the performance of his duties" by Presidential Decree No. 100 of 1 October 1997. Then, by the "very urgent" Dispatch No. 1495 of 9 October 1997 the Office of the President of the Republic ordered "his imprisonment in the public prison for five months".

40. The Commission also recommended "the limitation of the jurisdiction of military courts to trying strictly military offences committed by military personnel". In this connection, it should be pointed out that, in practice, there has been less encroachment of military jurisdiction into criminal matters, although the Special Rapporteur is not aware of there having been any legislation on the subject. However, on the positive side, an analysis of the courts involved in sentencing the inmates of Malabo public prison showed that almost all the civilian prisoners had been tried in the ordinary courts of justice. Likewise, in the case which gave rise to the conviction of Mr. Severo Monto, the sentence was handed down by the Criminal Division of the Malabo Court of Appeal, as distinct from what happened in April 1995 when he was brought before a court-martial.

41. Ritual murders: During the second half of 1997, a number of terrible murders, apparently of a ritual and organized nature, were committed in the city of Bata and also in Malabo. These had a profoundly disturbing effect on a public unaccustomed to this type of crime. The investigations carried out by the authorities led to the trial and sentencing to death of the alleged perpetrator of one of the murders in the city of Bata. At the time this report was being written, the sentence had not yet been carried out as it was still subject to appeal. Another of these cases, assumed to be a ritual murder because various of the victim's organs had been removed, was tried in the city of Malabo by the Criminal Division of the Court of Appeal (verdict of 27 November 1997), which sentenced three of the participants to 20 and 18 years in prison. The fact that one of those convicted was a member of a respectable local family, with relatives in the Government, while another occupied a prominent position in the country's educational system aroused people's suspicions and intensified their feelings of alarm and fear.

42. It should also be noted that for another murder committed in the city of Luba on the island of Bioko, though it lacked any of the ritual characteristics mentioned above, Teofilo Ntutumu Abogo was recently sentenced to death by the Criminal Division of the Malabo Court of Appeal (Summary No. 40/1997, verdict of 27 November 1997), which found him guilty of murdering a minor in his care (his niece) and secretly burying her body in the woods outside Luba. So far, this sentence too has still to be carried out. The Special Rapporteur interviewed the condemned man in Malabo prison.

43. It should be made clear that the Special Rapporteur has not taken any particular position with respect to these death sentences. Likewise, it needs to be stressed that these cases have no political connotations. In principle, insofar as Equatorial Guinea provides for this punishment in its legislation, the State is not violating any international legal norm by applying it. To

express an opinion on its appropriateness or otherwise would be to go beyond the Special Rapporteur's terms of reference.

D. Arbitrary arrests, intimidation and harassment

44. The Commission on Human Rights also recommended the "transmission of precise instructions to the forces of order and security against arbitrary arrests...and to put an end to the intimidation and harassment of political party activists...".

45. In the same context, to ensure freedom of movement and transit, it recommended the "dismantling of police and military checkpoints responsible for such human rights violations", both on the island of Bioko and in the mainland region of Rio Muni, since experience had clearly shown that it was here that free movement and transit were being impeded.

46. The Special Rapporteur was informed by the Ministry of the Interior that the police and military road blocks, which had been the source of continual incidents involving members of the opposition parties, had been removed, with the exception of some such as those at Niefang and Ebebiyin which were considered necessary for State security purposes. Nevertheless, the Special Rapporteur was able to confirm that at Rebola and Basacato on the island of Bioko road blocks were still in place, although they were not being manned until after 6.00 p.m.

47. Throughout 1997, various leaders and members of political parties were deprived of their freedom for short periods of time (a few hours or days). This occurred mainly in the mainland region of Rio Muni as a result of decisions taken by the peripheral authorities, detention being accompanied by physical ill treatment and threats as a means of pressuring the detainees into giving up their political activities. The practice of imposing fines as a substitute for detention has also continued. These heavy fines, which are arbitrarily fixed by the administrative (non-judicial) authorities, must be paid before freedom can be regained.

48. The Special Rapporteur notes that although these repressive measures aimed at opponents and dissidents persisted during the period in question, judging from the complaints duly received they were clearly less of a problem than in previous years. As he pointed out in his previous report, account should be taken of the lack of experience of democracy in these rural areas where the general low level of education and the attachment to traditional forms of local power exercised in an absolutist manner, together with the difficulty experienced by the village chiefs in understanding the abandonment of the single party in favour of a multi-party system, give rise to friction and violence inflamed by the mutual intolerance of the parties in conflict. In the opinion of the Special Rapporteur, the smaller number of incidents recorded in 1997 can be attributed to an increased awareness on the part of some of the peripheral authorities of the legal limitations on their powers, but also to the reduced level of activity of the political parties in a non-election year.

E. Deprivation of freedom

49. Malabo Prison: On 5 December 1997, the Special Rapporteur visited Malabo public prison known as "Black Beach" and, individually and confidentially, interviewed various prisoners, among them 28 men and 4 women. None of these prisoners had been charged with offences relating to political or ideological activities. However, one of them, Mr. Silvestre Orichi, whose case is being dealt with by the examining magistrate of the City of Malabo and who is accused by State Security of an offence relating to a goods vehicle, has been arrested on other occasions for political reasons. Mr. Orichi attributes his present detention to ideological persecution for belonging to the movement seeking self-determination for the island of Bioko (MAIB), which is confirmed by other members of the movement, on the grounds that a few MAIB propaganda "stickers" were found in his home and handed over to the court.

50. At its fifty-third session, the Commission on Human Rights had "welcomed the improvement in the conditions of prisoners and detainees introduced by the authorities...". On the present occasion, the Special Rapporteur was able to confirm that the treatment received in prison was generally good and none of the detainees complained of harassment or ill treatment. It is only fair to point out that the authorities have made efforts to improve the material conditions as compared with those noted during the visit made in November 1996 in connection with the Special Rapporteur's sixth mission.

51. However, the Special Rapporteur would urge the Government to seek a solution to the following problems which continue to give cause for concern:

(a) the diet is still blatantly inadequate, being limited to two loaves a day with a meagre portion of sardines and rice once a week, which is no improvement on the former situation. According to the prison authorities, the monthly budget for meeting the food needs of the prison is still 115,000 CFA francs per month (approximately 300 US dollars);

(b) medical care also continues to be inadequate and there is a shortage of medicines for treating the prisoners;

(c) the prisoners continue to perform unpaid compulsory labour outside the prison grounds. In previous reports to the Commission, the Special Rapporteur has said that the fact that work exists and is being performed outside the prison walls is very positive and shows that prisoners are humanely treated. However, he has also pointed out that prisoners should be remunerated for this work so that they can provide financially for their families and that the work should come under the control of the judicial authorities, which is not currently the case. In this connection, the authorities should be reminded of articles 75 and 76 of the Standard Minimum Rules for the Treatment of Prisoners (ECOSOC resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977) which provide examples and guidelines for action by governments in prison matters.

52. Members of the so-called Fuerza Democrática Republicana, a political party not so far recognized as such, complained to the mission that the journalist Sinecio Ngua Esono, together with Francisco Abeso Mba, Pelayo Ndong and Joaquin Mba, had been held in Bata public prison on political grounds since 27 August

1997. All of them were said to have been subjected to harassment and ill treatment in Bata.

F. Torture and cruel, inhuman or degrading treatment or punishment. The question of impunity

53. The Commission on Human Rights had urged the "immediate termination of all acts of torture and cruel, inhuman or degrading treatment or punishment and the imposition of criminal and disciplinary penalties for those responsible..." Although to a lesser extent and less frequently than in previous years, the Special Rapporteur did receive complaints of detainees held for short periods suffering torture and ill treatment. The Partido Union Popular supplied a copy of complaints to this effect lodged with the National Pact Monitoring and Supervisory Commission. At the time this report was written, these complaints had not yet been investigated by the authorities.

54. The Commission on Human Rights had urged upon the authorities the "termination of the impunity of those responsible in various ways for human rights violations". This was a recommendation repeatedly made by the Special Rapporteur who has always placed special stress on the problem of the impunity enjoyed by the violators of human rights in Equatorial Guinea. As he said in his report to the Commission's fifty-third session, "it will be difficult to make any progress towards respect for human rights in Equatorial Guinea, except incidentally, as long as the highest government and judicial authorities show no desire to put an end to the impunity enjoyed by State officials who have perpetrated or instigated human rights violations" (E/CN.4/1997/54, para. 77). Such impunity constitutes a serious obstacle to the enjoyment of these rights, as affirmed by the Vienna Declaration and Programme of Action approved by the World Conference on Human Rights on 25 June 1993 (Part II.E, para. 91). The problem of impunity was raised and included in the National Pact Evaluation and Legislative Agreements document drafted by the Government and the political parties, and a formal undertaking was given to impose criminal and administrative penalties on all perpetrators of human rights violations.

55. The question of impunity embraces the violation of all categories of human rights, whether civil, political, economic, social or cultural. The next paragraph of the report draws attention to a notable case of justice actually being done, which illustrates the principle that "the opposite of impunity is the properly functioning administration of justice". This was a case of death as a result of torture. The proceedings were unusual inasmuch as the violation of human rights by the authorities, in this case the military and the police, has very rarely led to investigation, trial and conviction.

56. As a consequence of blows received during his arrest, which took place on 31 January 1997 in the district of Evinayong, and on several occasions during detention, Mr. Evaristo Abaha Ndong, a 22-year old man who was a member of the Partido Convergencia Social Democrática y Popular, died the same day in Evinayong police station. He had been detained following the intervention of several gendarmes called in to deal with a family quarrel. The Special Rapporteur received from the authorities a copy of the verdict reached on 11 February 1997 by an ordinary court martial convened in Bata. The court found one gendarme guilty of "homicide" and sentenced him to 20 years in prison; two gendarmes were found guilty of being accomplices to homicide and received

10 years imprisonment; a soldier of the Land Forces was also found to have been an accomplice and was sent to prison for six months; a farmer found guilty of "disorderly behaviour" was punished with six months in prison; and a lieutenant of the Land Forces guilty of "serious misconduct for failing to perform military duties" was placed under arrest for 60 days. The persons convicted were also required to pay compensation to the family of the deceased.

G. Incidents occurring beyond the territorial borders

57. "Kidnapping" in Libreville, Republic of Gabon. Mr. Felipe Ondo Obiang Alogo, former Minister of State and former president of the National Assembly, and Mr. Guillermo Nguema Ela, former chairman of the Economic and Social Council, both leaders of the new political party Fuerza Democrática Republicana which is not yet legally recognized by the authorities, were interviewed by the Special Rapporteur and the Human Rights Consultant. They said that they had been living in the Republic of Gabon, as refugees recognized as such by the United Nations High Commission for Refugees (UNHCR), and complained that on 5 November 1997 they were detained in the city of Libreville by Gabonese gendarmes. After a few days, there were taken, handcuffed and blindfolded, to Libreville airport, where they were handed over to a unit of Equatorial Guinea's State security service. This unit then took them, against their will, to Malabo, in Equatorial Guinea's presidential aircraft which had arrived in Libreville a few days previously carrying the Head of State who was attending a presidential summit meeting. After being clandestinely deprived of their freedom for five days, in premises in the centre of the city of Malabo, handcuffed to each other and under bad conditions, on 14 November they were released. They were told that the State was not preferring charges against them and were given the option of returning to Gabon or staying in Equatorial Guinea; both preferred the latter alternative.

58. Incidents in Cameroon. During his visit, the Special Rapporteur received complaints to the effect that in the neighbouring Republic of Cameroon twelve former soldiers from Equatorial Guinea, eight of them recognized as refugees by the United Nations High Commission for Refugees, had been deprived of their freedom in a military camp in Yaundé by the Cameroon authorities and that two government commissions from Equatorial Guinea had tried, without success, to have them handed over in order that they could be brought back to their country of origin. The mission was unable to check the truth of these complaints, but the Government told the Special Rapporteur that a government commission had been sent for the purpose of informing those concerned that they could return freely to Equatorial Guinea since there was no charge or accusation against them.

H. Rights and situation of women

59. Commission resolution 1997/67 encouraged the Government "to continue the positive efforts it has already undertaken to put an end to the relegation of women to an inferior position and discrimination against them, and to extend their effective participation in the educational, professional, social and political spheres".

60. Approximately 52 per cent of the total population (400,000 inhabitants) are women, 84,000 of whom are of child-bearing age. The Special Rapporteur considers it desirable to reproduce part of a UNDP report on Equatorial Guinea, dated April 1997, which includes important information about the situation of

women: "This population is engaged in low-productivity activities, especially subsistence farming, which is an important source of employment for women since, as a result of the traditional division of labour, it is mainly women's work. This activity represents 37.4 per cent of GDP, excluding oil production, but more than 90 per cent of agricultural production; it consists mainly of growing food for home consumption, any surplus being sold. Other important occupations for women include commerce (3.8 per cent), domestic labour (2.8 per cent) and the public service, with 1.9 per cent of female employment by sector. The creation of a Ministry to deal with matters of concern to women and the aggressive campaign it has conducted have aroused greater awareness of the situation of women. During the last few years it has been possible to note a significant improvement. For example, although only one executive post was reserved for women when the Ministry was set up, another post has been added, with an accompanying extension to other areas such as health. This has increased women's share of the total number of executive positions from 2.3 to 4.8 per cent. Despite this progress, in many sectors women are still failing to catch up with men. For example, in Parliament women occupy only 7.5 per cent of the 80 seats. Likewise, their share of administrative and senior management posts and of jobs in the professional and technical categories amounts to only 1.6 per cent and 26.8 per cent respectively. In the public service, 23 per cent of officials are women, and because of their level of education - more than 86 per cent only have a primary education plus "O" levels - they find themselves doing the least well paid and lowest grade jobs. Finally, only 28 per cent of the national income goes to women. In the health sector, women are again worse off. The maternal mortality rate is estimated at 500/100,000" (Assessment Note for the formulation of the country cooperation framework - UNDP Malabo, April 1997).

61. The Special Rapporteur endorses the conclusions of this report. In his previous report to the Commission on Human Rights (E/CN.4/1997/54, para. 105) he noted and acknowledged the efforts of the Government to put an end to the relegation of women to an inferior position and discrimination against them. He now re-emphasizes that these efforts should continue. Although a long road lies ahead, the country is moving in the right direction. It should also be noted that Presidential Decree No. 98 of 13 August 1997 approved the "National Action Programme for the Integration of Women into the Development Process", at the proposal of the Ministry of Social Affairs and the Situation of Women.

I. Ethnic diversity

62. The Commission on Human Rights encouraged the Government to remain alert to "any sign or symptom of discrimination against ethnic minorities". On previous occasions, the Special Rapporteur has informed the Commission of the existence of a situation involving discrimination against persons belonging to the Bubi ethnic group on the island of Bioko and the inhabitants of the island of Annobon. During his latest visit he found that this discrimination still persists. With regard to the Bubis, it should be noted that the victims of the abuses are actual or alleged members of or simply sympathize with the Movimiento para la Autodeterminación de la Isla de Bioko (MAIB). The Special Rapporteur wishes to reiterate the recommendation he made in an earlier report (E/CN.4/1996/67, paras. 54 and 87): "nothing should prevent freedom of action by the movement of which many Bubis are members, the Movimiento de Autodeterminación de la Isla de Bioko (MAIB), which is non-violent and asks only to exercise its right of self-determination which international law recognizes

in principle for all 'peoples', without exposure to discrimination or repression" within, of course, the limitations imposed by international law which safeguards the territorial integrity of States, their political unity and their sovereignty and is therefore opposed to any unilateral declaration of secession. All this notwithstanding, nothing prevents agreements being reached by free decision of all the interested parties.

63. During 1997, the practice of arresting the best known members of the MAIB and holding them for several days continued. During the mission, the Special Rapporteur noted that there were several residents of Baney among the inmates of Malabo public prison: Mr. Martin Puye Topete, Mr. Flaviano Chele Becari, Mr. Cleto Batapa Salomon, Mr. Martin Muebake Bakete and Mr. Gaspar Barila Buale. The summary reports drawn up by the General Commissariat of Police charged all of them with being members of the MAIB and they were brought before the examining court of first instance of the city of Malabo. The Special Rapporteur and the Human Rights Consultant met the judge concerned to ask him for a quick decision, which in fact he gave on 4 December 1997, ordering a stay of proceedings and their immediate release. The accused admitted in court that they belonged to the Movimiento, stating that even without having government permission they were continuing to hold meetings to see if they could obtain from the Government a decision, favourable or unfavourable, concerning the authorization that had already been requested. The proceedings led the examining judge to conclude that "there was no rational evidence of criminality deserving of legal mention in this court", so that they were able to regain their freedom that same day. In the case, already described in connection with the visit to Malabo prison, of Mr. Silvestre Orichi, a Bubi and a leader of the MAIB imprisoned on other grounds set out in a report being dealt with separately, the judge's decision was awaited.

J. Non-governmental organizations

64. Legal recognition of non-governmental human rights organizations. The proceedings for legal recognition of non-governmental organizations engaged in defending human rights, which applied to the Ministry of the Interior for recognition several years ago, are still at a virtual standstill. The applications of other NGOs with social interests are also still pending. In his 1997 report (E/CN.4/1997/54, para. 62) the Special Rapporteur again referred to General Assembly resolution 40/123 of 13 December 1985 which draws the attention of States to "the constructive role that national non-governmental organizations can play", as reaffirmed by the Vienna Declaration and Programme of Action of 1993.

IV. CONCLUSIONS

65. After lengthy meetings held between 10 February and 25 April 1997, the dialogue between the Government and the political parties yielded the "Document on the Evaluation of the National Pact and Legislative Agreements 1997" which was signed by the Government and the parties on 26 April 1997 and expressly approved by the Council of Ministers. This document gave rise to great expectations of a decisive step forward in the process of democratization and in the conditions of governability of the country and created a fund of hope for the future.

66. Not all the measures agreed and undertakings given have been put into effect with the necessary promptness and there have been significant delays in implementation. This is undoubtedly a matter of concern insofar as the fulfilment of the agreements by both parties is of the utmost importance for establishing a climate of *détente* and a system of guarantees sufficient to permit the holding, under the best possible conditions, of the legislative elections, to be held on an as yet unspecified date in 1998, in which all the seats in Parliament (the House of Representatives of the People) will be disputed.

67. After a careful examination of the situation with respect to human rights and fundamental freedoms, the Special Rapporteur again observes, as he did in paragraphs 83 et seq. of his previous report in January 1997, some measure of political will on the part of the authorities to continue the process of establishing the rule of law in Equatorial Guinea. He appreciates the Government's efforts in this direction which have led to modest progress in the situation of human rights and fundamental freedoms.

68. The above notwithstanding, the Government and other authorities should be urged to make an additional effort to overcome the obstacles which still stand in the way of the enjoyment of human rights by the population as a whole. A slowing down of the process of democratization should be avoided as this would not only affect human rights but would also deflate the expectations raised by the agreements of April 1997 between the Government and the political parties, thereby reintroducing mistrust and despondency into civil society.

69. There have been no substantial changes in the judicial structure of the State that would enable the institutions to function more democratically. Moreover, the fact that laws, decrees and governmental acts are not being published periodically and regularly continues to be a source of serious uncertainty about the law.

70. With respect to the enjoyment of economic, social and cultural rights, the Special Rapporteur must point out that there has been little progress in this area and the situation of extreme poverty in which a large part of the population of Equatorial Guinea is living continues to give grounds for grave concern.

71. In the area of civil and political rights there have been some important advances, which are mentioned in the body of this report. Perseverance will be required since there remains some way to go before democracy and the rule of law are finally achieved. In the same connection, the Special Rapporteur much appreciates that at the time of his visit there were virtually no prisoners or detainees being held for political offences or on political or ideological grounds. He also wishes to congratulate the authorities on their efforts to eliminate the relegation of women to an inferior position and discrimination against them.

72. Nonetheless, it is to be regretted that some authorities have continued the illegal and wrongful practice of unjustified detention and have failed to respect the right of every individual, political activist or not, to security, integrity and freedom. There have also been cases of torture and ill treatment, which is not only intolerable but requires and demands of the authorities that

they investigate, try and impose criminal and disciplinary penalties on those responsible for such offences. At the same time, it must be acknowledged that the number and frequency of these incidents have declined.

73. The Special Rapporteur makes the following recommendations in support of the efforts of the Government of Equatorial Guinea to protect human rights and to consolidate the progress already achieved.

V. RECOMMENDATIONS

74. The Special Rapporteur recommends that laws, decrees and governmental acts should be published periodically and regularly. He feels strongly that Equatorial Guinea should accede to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the International Convention on the Elimination of All Forms of Racial Discrimination.

75. He deems it essential to improve both the functioning of the judiciary and the training of judges, prosecutors and lawyers in order to ensure the proper, guaranteed and effective administration of justice. Where the military courts are concerned, he reiterates his earlier recommendation that their jurisdiction should be limited to trying strictly military offences committed by military personnel.

76. In view of the great expectations of a decisive step forward in the process of democratization aroused by the dialogue between the Government and the political parties which yielded the "Document on the Evaluation of the National Pact and Legislative Agreements 1997" signed by the Government and political parties on 26 April 1997, it would be extremely useful for both parties, Government and opposition, to fulfil, scrupulously and without delay, the provisions of the April agreements. This is of the utmost importance for establishing a climate of *détente* and a system of guarantees sufficient to permit the holding, under the best possible conditions, of the legislative elections, to be held on an as yet unspecified date in 1998, in which all the seats in Parliament (the House of Representatives of the People) will be disputed.

77. Similarly, the Special Rapporteur would like the Commission on Human Rights to urge the Government to adopt the recommendations made by the United Nations Electoral Adviser who visited the country in 1995 and those made by the Special Rapporteur (R/CN.4/1997/54, para. 104).

78. The Special Rapporteur considers it to be of the greatest importance for the Government to reiterate the instructions transmitted in 1997 to the forces of order and security (central authorities, government delegates, police forces, armed forces and village chiefs) not to order or make arbitrary arrests and to respect the right of the individual to security, integrity and freedom. Likewise, he recommends that all the police and military checkpoints within the territory of Equatorial Guinea, both on the island of Bioko and in the mainland region of Rio Muni, should be dismantled.

79. The Special Rapporteur strongly recommends that the authorities immediately put an end to all acts of torture or cruel, inhuman or degrading treatment or punishment and that they investigate, try and impose criminal and

disciplinary penalties on those responsible for such offences. To achieve the rule of law it is essential to terminate the impunity of those responsible in various ways for violations of human rights.

80. While much appreciating that during his visit to the country he found almost no cases of imprisonment or detention for political offences or on political or ideological grounds, the Special Rapporteur considers that the authorities should be encouraged to continue with the efforts undertaken to improve the conditions of convicted and unconvicted prisoners and to take fundamental and urgent steps to provide them with sufficient food and medical attention, including medicines and appropriate treatment. Similarly, it would be desirable for the authorities to take any opportunities they may be offered to send members of the prison service, especially officials of the Malabo and Bata prisons, to follow training courses in other countries.

81. The Special Rapporteur considers that the authorities should also be encouraged to continue the efforts already undertaken to put an end to the relegation of women to an inferior position and discrimination against them, until they have achieved equality of opportunity with men.

82. The Government and other authorities should foster the conditions necessary to ensure that all the people enjoy economic, social and cultural rights and to enable broad sectors of the population of Equatorial Guinea to escape from the extreme poverty in which they are living.

83. Any sign or symptom of discrimination against ethnic minorities should also be firmly opposed.

84. The Special Rapporteur considers it extremely important for the Commission on Human Rights to request the United Nations High Commissioner for Human Rights/Centre for Human Rights to continue to provide technical assistance and advisory services to Equatorial Guinea - has it has been doing - in cooperation with the Government, in order to strengthen national capacities, and in particular, with the cooperation of United Nations Development Programme, to continue the programme of courses and seminars already successfully begun.

85. Lastly, the Special Rapporteur considers that the Government of Equatorial Guinea should be informed that the progress so far achieved, though commendable, has not yet attained a level that would enable the United Nations Commission on Human Rights to reduce its monitoring of the situation. Accordingly, international supervision, together with technical assistance and advisory services, should be maintained.